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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA, New York, N.Y.

5 v. 13 CR 290 (PAC)

6 CHRISTINA CHAI and HI JONG  
7 LEE,

8 Defendants.  
9 -----x

10 September 10, 2014

11 Before:

12 HON. PAUL A. CROTTY,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
17 Southern District of New York

18 BY: ELISHA KOBRE

19 DANIEL TEHRANI

20 Assistant United States Attorneys

21 BRAFMAN & ASSOCIATES, P.C.

22 Attorneys for Defendant Chai

23 BY: MARC A. AGNIFILO

24 JACOB KAPLAN

25 SERCARZ & RIOPELLE

Attorneys for Defendant Lee

BY: ROLAND G. RIOPELLE

GIULIANA GRAHAM

Also Present: Robert Polimeno, DEA

Nicholas Evert, Paralegal

ARIEN GREENE-PINTO, Korean Interpreter

KYCONG SILK SONG, Korean Interpreter

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1 (In open court, jury not present)

2 THE COURT: Mr. Riopelle, you had two matters you  
3 wanted me to take up, and I'm happy to take them up. Number  
4 one was the interpreter. And we've checked with the supervisor  
5 of the interpreters. This is one of our very best interpreters  
6 in the Korean language. There may have been problems which we  
7 believe started because the jurors weren't always using the  
8 microphone.

9 Mr. Lee, can you hear us

10 DEFENDANT LEE: Yes.

11 THE COURT: So I think that if all of us use the  
12 microphones -- Mr. Agnifilo wasn't using the microphone in his  
13 opening -- that feeds into the interpreters' earpieces, so  
14 always be mindful of using the microphones, I think that this  
15 ought to cure the problem. If it doesn't, Mr. Riopelle, let us  
16 know.

17 MR. RIOPELLE: I will.

18 THE COURT: And obviously Mr. Lee has to know what is  
19 going on.

20 MR. RIOPELLE: Understood, thank you, your Honor.

21 THE COURT: Now with respect to your letter about  
22 Mr. Catizone's testimony, I didn't get a response from the  
23 government. Does the government want to be heard?

24 MR. TEHRANI: Yes, we are largely okay with the  
25 instruction. There is one --

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1 THE COURT: Mr. Lee --

2 MR. RIOPELLE: That may have been part of the problem  
3 too, if you holds onto the --

4 THE COURT: It covers -- up.

5 MR. RIOPELLE: Exactly.

6 THE COURT: -- his receptor.

7 MR. RIOPELLE: That's exactly right, that may be part  
8 of the problem, too. We're all learning how to deal with the  
9 technology.

10 THE COURT: Mr. Tehrani.

11 MR. TEHRANI: So we are largely okay with the  
12 instruction. We have one proposed instruction, one proposed  
13 addition to the instruction, but before we get to that, we have  
14 an issue that we would like to raise with your Honor that might  
15 affect the instruction about the content of Mr. Catizone's  
16 testimony.

17 We intend to ask Mr. Catizone during his testimony  
18 about certain opinions that he has developed in reviewing  
19 certain of the materials in this case. And in addition to  
20 asking him what his specific opinion is, we also intend to ask  
21 him whether, in his view, a pharmacist operating in the usual  
22 course of professional practice should have identified certain  
23 prescriptions as invalid. The defense counsel has objected.  
24 Our view is that he is not testifying as to any defendant's  
25 actual state of mind, he is testifying to standards of

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1 professional practice and what his opinion is with respect to a  
2 pharmacist operating in the normal course of professional  
3 practice.

4 THE COURT: Mr. Riopelle?

5 MR. RIOPELLE: Your Honor, effectively what the  
6 government wants to do is have the expert testify that a  
7 pharmacist looking at this prescription should have known that  
8 it was bogus, and that is the equivalent of wrongful mental  
9 state that is charged in the indictment. They have asked for a  
10 conscious avoidance instruction, and that is right down the  
11 middle of the mental state, according to the conscious  
12 avoidance instruction. And I believe Rule 704(b) provides that  
13 an expert's testimony on the mental state of a defendant, to  
14 the extent that mental state is relevant in a case, is  
15 improper. So that testimony, that a pharmacist should have  
16 known this prescription was bogus is, I submit, improper.

17 THE COURT: All right.

18 MR. AGNIFILO: Just to add to that, I think the  
19 overlap is just too direct. In other words, if the your Honor  
20 gives the conscious avoidance instruction, you're going to  
21 instruct the jury that if one of the defendants believed that  
22 there was a strong probability that certain facts were true and  
23 didn't do anything about it, that the jury could use that in  
24 place of knowledge. And I think that's in sum and substance  
25 exactly what Mr. Catizone is going to be telling this jury.

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1 And so I think, especially because we have the conscious  
2 avoidance instruction, he's getting -- he's violating the  
3 provision against commenting on mental states.

4 THE COURT: I'm going to allow him to express his  
5 opinion on that issue.

6 With regard to Mr. Riopelle's charge on Mr. Catizone,  
7 I'm going to give the charge or give the instruction pretty  
8 much as proposed, except I'm going to reverse the order in  
9 which I'm going to give it.

10 I would also like to limit this to Count One.

11 MR. RIOPELLE: Okay, I think that's fair.

12 THE COURT: Where it says the crimes charged in this  
13 case, and say the crime charged in Count One, it's obviously  
14 not Two and Three.

15 MR. RIOPELLE: That makes sense.

16 THE COURT: And then with respect to the credibility,  
17 I'm going to say, you know, when I gave you the preliminary  
18 instructions I told you an important task for every jury is to  
19 determine the credibility of witnesses, and lead into that in  
20 your language.

21 MR. RIOPELLE: And your Honor, I would ask, in light  
22 of your Honor's ruling this morning as to Mr. Catizone being  
23 able to express an opinion to what a pharmacist should have  
24 known seeing these prescriptions, I would ask that the Court  
25 add to this instruction and advise the jury that it will be for

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1 them to determine ultimately whether any pharmacist in the case  
2 knew that there was drug dealing going on, or something like  
3 that, to make sure that they understand that it is ultimately  
4 for them to decide that issue, whatever Mr. Catizone's opinion  
5 may be.

6 THE COURT: All right.

7 MR. TEHRANI: Your Honor, we have no objection to  
8 that. We do have, I believe, an agreed-upon addition to the  
9 paragraph that begins "Second."

10 THE COURT: Yes.

11 MR. TEHRANI: And so what we would propose is right  
12 before the final sentence it says, "I will explain more about  
13 that to you at the end of the case," our proposed language  
14 would be something to the effect of: That said, the failure to  
15 comply with regulations is a factor you can consider in  
16 determining whether either of the defendants knowingly  
17 participated in unlawful distribution of oxycodone.

18 THE COURT: That's agreed to?

19 MR. RIOPELLE: Reluctantly.

20 THE COURT: Give me the language again, that said.

21 MR. TEHRANI: That said, the failure to comply --

22 THE COURT: Wait a minute. I know the on subway it  
23 says if you can read this you can get a job. I'm not that  
24 good. That said --

25 MR. TEHRANI: That said, the failure to comply with

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1 regulations is a factor you can consider in determining whether  
2 either of the defendants knowingly participated in the unlawful  
3 distribution of oxycodone.

4 THE COURT: That said, the failure to comply with  
5 regulations is a factor you may consider -- you can consider in  
6 determining whether either of the defendants knowingly  
7 participated in the unlawful distribution of oxycodone.

8 MR. TEHRANI: That's correct, your Honor.

9 THE COURT: What was the language you wanted,  
10 Mr. Riopelle, in light of my ruling?

11 MR. RIOPELLE: In light of your ruling, I would ask  
12 the Court insert, wherever it's appropriate in the instruction,  
13 a reminder to the jury that although Mr. Catizone may express  
14 an opinion as to what a pharmacist should have known when  
15 examining the prescriptions in this case, it is for you, the  
16 jury, to decide whether either of these defendants knowingly  
17 participated in the unlawful distribution of oxycodone.

18 MR. AGNIFILO: One more request, Judge. Are you done  
19 with Mr. Riopelle's request?

20 THE COURT: Yes.

21 MR. AGNIFILO: I think rather than failure in the  
22 government's proposed language, it should be knowing failure.  
23 And I say that because I think, as is apparent --

24 THE COURT: Come on, this is day two of a 13-day trial  
25 and you're squabbling over words. I mean let's -- the word

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1 "knowingly" is picked up in Mr. Riopelle's instruction.

2 There's only so much they can absorb.

3 MR. AGNIFILO: All right, fine, Judge.

4 THE COURT: Mr. Riopelle, how much time do you want  
5 for your opening?

6 MR. RIOPELLE: I think I would be approximately 20  
7 minutes.

8 THE COURT: Does that mean more than 20 minutes or a  
9 little less than 20 minutes?

10 MR. RIOPELLE: I think it will be around 20 minutes; a  
11 little more, a little less. I don't write them out and I don't  
12 read them, so anything could happen, Judge.

13 THE COURT: We'll start with the opening statements  
14 then. Who is your first witness?

15 MR. TEHRANI: Your Honor, one procedural issue with  
16 Mr. Catizone. I raised this with defense counsel, they don't  
17 object. We also intend to ask Mr. Catizone to offer his  
18 opinion on certain graphical exhibits that we intend to offer  
19 through other witnesses later in the trial. So we would like  
20 to have the jury be able to see those graphs when Mr. Catizone  
21 is testifying, so we'll offer them subject to connection.

22 THE COURT: You talked about this on Monday.

23 MR. TEHRANI: Yes, we wanted to alert you that it was  
24 happening with this witness as well.

25 THE COURT: As soon as the jury gets here --

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1                   What's the count?

2                   DEPUTY CLERK: It was 10. I think I heard the door  
3 opening.

4                   THE COURT: As soon as they get here, Mr. Riopelle --

5                   MR. RIOPELLE: I'll be ready.

6                   Thank you, Judge.

7                   THE COURT: Incidentally, this is the procedure that I  
8 like to follow rather than taking sidebars and interrupting the  
9 jury. Once they get here I like to have continuous testimony.  
10 I'm happy to do it during the breaks, lunchtime and after -- at  
11 the end of the day as well as at the beginning of the day. I  
12 really think that we ought to spend the time when the jury is  
13 sitting in the box with the jury, not at the side bar.

14                   MR. RIOPELLE: Understood, your Honor, thank you.

15                   (Recess taken).

16                   MR. KAPLAN: Is Kaplan.

17                   THE COURT: The jury is here, so Mr. Riopelle, we'll  
18 start with you.

19                   MR. RIOPELLE: Thank you, Judge.

20                   (Continued on next page)

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Opening - Mr. Riopelle

1 (Jury present)

2 THE COURT: As I told you on Monday, all of us have to  
3 be here before any of us can get started, so I would appreciate  
4 your trying to be as prompt as you possibly can. I know  
5 circumstances conspire against you, but try to be on time so we  
6 can get started at 9:30.

7 We'll have Mr. Riopelle's opening on behalf of  
8 Mr. Lee.

9 Mr. Riopelle.

10 MR. RIOPELLE: Thank you, your Honor.

11 Good morning, ladies and gentlemen. Welcome back.  
12 I'm getting over a summer cold, so if my voice drops, throw a  
13 pencil at me or something to remind me to speak up.

14 May please the Court, it is my duty and pleasure to  
15 represent the defendant Hi Jong Lee, with my colleague,  
16 Giuliana Graham, over at the end of the table.

17 Ladies and gentlemen, at the end of this case you'll  
18 be asked to render a verdict. And that verdict is a little  
19 like a history of what you'll see in this courtroom, it will be  
20 a history of what happened back in 2011 and 2012 as charged in  
21 the indictment, it will be your job to tell us what the facts  
22 are. That's what a jury does. It will be your job to tell us  
23 what the facts are, what the history was in 2011 and 2012.

24 I want to remind you, though, that "History," as John  
25 Gardner said, "doesn't look like history when you're living

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Opening - Mr. Riopelle

1 it." It's confusing. The hurly-burly of daily events don't  
2 look like the clean events of history as it is written after  
3 the fact. And it will be your job to sift through the facts,  
4 decide which are significant, which are not, and decide what  
5 actually happened back in 2011 and 2012.

6 And as you do so, I want you to keep in mind another  
7 famous quotation, maybe the best opening line in all of  
8 literature, because the facts will show this is true, what  
9 Tolstoy said in Anna Karenina, "All happy families are alike,  
10 every unhappy family is unhappy in its own way." And the proof  
11 will show that, ladies and gentlemen.

12 In this case, the history of this case takes place in  
13 a certain place and in a certain time, and I want you to keep  
14 that in mind. You're going to hear a lot about the Stanley  
15 Pharmacy. There it is in downtown Yonkers, a busy urban area.  
16 You can see all the foot traffic there. And it's a certain  
17 type of a business, you'll hear, it's a family business.

18 It's a family business, like so many others, begun by  
19 an immigrant, my client, Mr. Lee. Many, many years ago he  
20 bought the pharmacy. He operated it for many, many years. And  
21 it's kind of an immigrant story, because as you'll hear many  
22 members of his family worked there, as is often true in these  
23 small family businesses. And you will hear from an expert  
24 today that not every regulation applicable to pharmacies was  
25 upheld in every respect. Use your common sense. You've been

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Opening - Mr. Riopelle

1 told that by other counsel. You run a small business, you do  
2 the best you can. Sometimes regulations are a little bit  
3 violated, but at the end of the day you're not going to be  
4 deciding whether regulations were violated, you'll be deciding  
5 whether my client, Mr. Lee, was a dope dealer, and that's a  
6 very different decision.

7 Urban environment.

8 Now let's talk about the family business, the whole  
9 family worked there at one point or another. You're going to  
10 hear a lot about Mr. Lee's son, Ji Lee, who worked there as a  
11 manager during the time that's relevant to your considerations,  
12 2011 and 2012. Indeed, he was really running the store at that  
13 point. He had taken it over.

14 You'll hear that Mr. Lee's daughter, Christine, worked  
15 there from time to time as a cashier and as an intern, a person  
16 studying to become a pharmacist. You'll hear Ji Lee's wife  
17 worked for the pharmacy as a sort of financial manager doing  
18 the books and that sort of thing. As you heard earlier, Ji  
19 Lee's sister-in-law, Christina Chai, our co-defendant, worked  
20 there as a supervising pharmacist in 2011 and 2012.

21 You'll hear that this was a busy urban pharmacy.  
22 You'll see some videotapes of people coming in and out of there  
23 all day. It's a busy place. It sold the stuff the pharmacy  
24 sells, the drugs and all that, as well as things as simple as  
25 shampoo, like a Duane Reed. It's a mom and pop shop, but very

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Opening - Mr. Riopelle

1 busy.

2                   What was my client, Mr. Lee's role, in the pharmacy?  
3 You'll hear that he bought the pharmacy many years ago, way  
4 back in the 1980s. He was a much, much younger man. He worked  
5 at the pharmacy very hard for many years. He was a pharmacist  
6 himself during the time that he owned the pharmacy. It was a  
7 real grind to work there, but he made a good living by devoting  
8 himself to that pharmacy for so many years.

9                   And his son, Ji Lee, worked with him at the pharmacy  
10 from the time Ji was a small boy. Like many small businesses,  
11 the children come, they see their dad at work, they do a little  
12 work as they grow up, they work as a cashier, they help dad.  
13 My experience is usually they're screwing things up more than  
14 helping, but that's how families are, they come to dad's work  
15 to help him.

16                   You'll hear that my client, as he aged and got older,  
17 began slowing down years ago, years before the problems  
18 happened at the pharmacy. And we don't deny there were  
19 problems at the pharmacy. Years ago as my client aged, he  
20 became tired. He was injured in a car accident. He ultimately  
21 became ill with cancer. And as that happened, he slowed down  
22 significantly at the pharmacy. You'll hear that by the time of  
23 the events in this case he was only there a few hours a week.

24                   Like most people who own a small business and work it  
25 for so many years, he wasn't able to give it up entirely. This

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Opening - Mr. Riopelle

1 was his life. So he came back during the week every week, a  
2 few times for a few hours to do just a few things, but he was  
3 effectively semi-retired by the time the problems began. He  
4 had turned the pharmacy over to his son Ji Lee to operate the  
5 pharmacy years ago, long before the events that are key to this  
6 case in 2011 and 2012. And you'll hear from witness after  
7 witness that it was Ji Lee who managed and operated the  
8 pharmacy in 2011 and 2012.

9 My client, Mr. Lee, was not at the pharmacy every day.  
10 He came in one, two, three times a week for a few hours, and on  
11 Saturdays. You'll hear that it was just a few hours a week he  
12 was there. You will hear from the witnesses that when he was  
13 there, he spent most of his time downstairs in an office that  
14 he had in the pharmacy for many years. And you will see videos  
15 of what was going on upstairs in the pharmacy. You will not  
16 see my client in very many of those videos, because that's not  
17 the part of the pharmacy where he spent his time.

18 An even when he was upstairs, you'll hear that my  
19 client rarely worked in the pharmacy area directly with the  
20 customers. He was not someone who dealt directly with the  
21 customers and the regulars who you will hear from here in  
22 court, the people involved in the oxycodone distribution  
23 conspiracy charged in the indictment. My client really didn't  
24 deal with them. Lots of reasons for that. His English isn't  
25 that great. He's an immigrant. He's a pharmacist. He's a

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Opening - Mr. Riopelle

1 technical guy. He's a good business manager. But in terms of  
2 client relations, his son, who spoke English much better than  
3 he did, the cashiers who spoke English much better than he did,  
4 they were the people that dealt with the customers. You'll  
5 hear that Ji dealt with the customers over and over and over,  
6 and that it was Ji Lee, Ji Lee, his son, who handled the money  
7 that was taken in at the pharmacy.

8 And at the end of this case, ladies and gentlemen,  
9 when you write your history, you will find that Mr. Lee, my  
10 client, had no idea that oxycodone was being sold improperly at  
11 the Stanley Pharmacy in 2011 and 2012. The pharmacy that he  
12 established and worked at, bought way back in the 1980s and  
13 worked at so many years. Remember, the problems really started  
14 only at the very end after my client had begun to withdraw from  
15 the pharmacy.

16 You'll hear that Ji Lee dealt with the drug  
17 wholesalers, the people selling the oxycodone to the pharmacy  
18 that was then distributed. You'll hear that Ji ordered the  
19 pills. Ji handled any problems with the drug orders. You'll  
20 hear that Ji dealt directly with the retail customers, the  
21 regulars, the guys who will come in and tell you they were dope  
22 dealers and buying oxycodone at the Stanley Pharmacy, they  
23 dealt with Ji Lee. And most importantly, from my client's  
24 perspective. You will hear that 2003, his son, Ji Lee,  
25 collected and handled the cash from the regulars who were

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Opening - Mr. Riopelle

1 paying for their oxycodone in cash.

2 Now ladies and gentlemen, my client at this point in  
3 time, 2011 and 2012, had worked with his son in that pharmacy  
4 for will, many years. He had come to trust his son. He had  
5 come to rely on his son. He had no reason to believe that his  
6 son would do the things that are charged in the indictment.

7 Now it is true, you will hear that Mr. Lee, my client,  
8 made some of the bank deposits at issue in this case. He made  
9 them at the Bank of America branch just around the corner or  
10 down the street in downtown Yonkers in Getty Square. That's  
11 where these deposits happened. You'll hear that my client had  
12 a sort of routine where he would come into the pharmacy two or  
13 three days a week, go down to the basement, count the cash that  
14 Ji Lee had gathered over the last day or so, take it to the  
15 bank with the deposit slip and deposit it. You'll hear that  
16 the deposits my client made were often fairly large. They  
17 included both checks and cash in many cases. You'll hear he  
18 was not trying to hide the fact that he was depositing a lot of  
19 money in the bank from time to time. Some of the deposits were  
20 pretty large. And you will hear that my client made sure to  
21 hand carry those deposits into the bank himself. He made the  
22 deposits in person.

23 Now as you hear and consider this evidence, I want you  
24 to consider the fact that my client is charged with making  
25 these deposits in an illegal way, either to launder the

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Opening - Mr. Riopelle

1       proceeds of the narcotics crime or to engage in the crime of  
2       structuring, about which I will have something to say in just a  
3       moment or two. Consider that fact when you consider the fact  
4       that my client went into the bank in person every day that a  
5       deposit was made at Getty Square with a deposit in his own  
6       hand. If he had really known that this was narcotics proceeds,  
7       ask yourselves as you think about this evidence and you hear it  
8       in court, would he have done that? Would he really have done  
9       that? Doesn't make sense.

10           You'll hear the deposits were made a few days a week  
11       with an ordinary deposit slip. It looked just like that. And  
12       because my client didn't come to the pharmacy every day,  
13       because the deposits he was making included the cash taken in  
14       by the pharmacy over two or three days at a time, yes, those  
15       deposits had a lot of cash in them, sometimes 7, 8, \$9,000 at a  
16       time. Nothing unusual about that. It was a busy pharmacy.

17           Where did the cash come from? You'll hear that the  
18       cash at the end of the day was put in a little basket like  
19       that. It's a pharmacy basket where the prescriptions are  
20       passed back and forth to the pharmacist. Ji Lee would put the  
21       cash in that basket at the end of the day and leave it for his  
22       dad to deposit when he got in.

23           Now ladies and gentlemen, nobody in this case is going  
24       to suggest to you that Mr. Lee's son, Ji Lee, was not engaged  
25       in improper distribution of oxycodone. And it was Ji Lee who

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Opening - Mr. Riopelle

1 left that cash in the basket for his dad to deposit when his  
2 dad came into the pharmacy. It was Ji Lee who left the 7, 8,  
3 \$9,000 amounts in that basket for dad to deposit.

4 So I submit to you that at the end of this case, when  
5 you decide what the history was, it was Ji Lee who was actually  
6 doing the structuring. He was the guy making sure that not  
7 more than \$10,000 was deposited in cash at any time. He was  
8 leaving an amount for his dad that would not trigger the filing  
9 of that currency transaction report. His dad would simply come  
10 in, count the cash, fill out a deposit slip, and show up at the  
11 bank in person. That's what happened here.

12 Now I want to also remind you that the way the  
13 structuring count is charged in the indictment, it is charged  
14 that my client did the structuring "while violating other laws  
15 of the United States, and as part of a pattern of illegal  
16 activity involving more than \$100,000 in a twelve-month period  
17 and in furtherance of the narcotics conspiracy."

18 So I suggest to you that if you find at the end of  
19 this case that my client knew nothing about a narcotic  
20 conspiracy, you will also find that he did not structure these  
21 deposits to aid that narcotics conspiracy.

22 (Continued on next page)

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## Opening – Mr. Riopelle

1 MR. RIOPELLE: Indeed, you will find that many of the  
2 deposits at issue in this case were not even made by my client.  
3 Because the proof will show that during 2012, as he got older,  
4 as he got towards the end of his life, my client decided to  
5 travel a lot. He was travelling to venues that were important  
6 to him; to Los Angeles where he had another son, Jay Lee, and  
7 grandchildren. He traveled there. He was out of town in Los  
8 Angeles when some of the deposits that the government claims  
9 were structuring were made. He was traveling to Seoul, Korea  
10 where he's from, and to China on a religious mission. You'll  
11 hear that my client was a deeply religious man and went to  
12 China for an extended period, on a religious mission, and many  
13 of the deposits that the government charges as structuring were  
14 made while my client was in China and in Korea. As a religious  
15 man, he went to Israel to the Holy Land at the end of his life,  
16 he wanted to see it. Many of the deposits were made then on  
17 that trip.

18                   He also went to the Dominican Republic and to Palm  
19 Beach. We'll be able to show you when he was there. And  
20 you'll see that some of the deposits the government claims were  
21 structuring deposits were made then.

22                   In fact, ladies and gentlemen, approximately 45 of the  
23 deposits that the government claims were structuring worth  
24 \$275,000, those were made while he was out of town.

Now, some of the key documents in this case are the

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Opening - Mr. Riopelle

1 prescriptions. And you'll start hearing testimony about them  
2 right today. And I want to show you two of them which are very  
3 important to Mr. Lee's case. You'll see these during the  
4 trial.

5 These are two prescriptions that the indictment  
6 charges were filled by my client. And I submit to you that by  
7 the end of the trial, after you've heard all the evidence, you  
8 will find that these were not filled by my client at all, and  
9 that he had nothing to do with them.

10 Now, the reason the government charges that my client  
11 had something to do with them is, you'll hear that a pharmacist  
12 often writes a small entry on the front of the prescription --  
13 and there it is -- and there is an initial H. on the front of  
14 this prescription. In addition to that, on the back of the  
15 prescription there is a label that is the same label that goes  
16 on the pill bottle that's generated by the computer that is in  
17 the back where the pharmacist is.

18 Now, in this case there is an H. on the front. And if  
19 you look closely at that label, you will see that there are  
20 initials on the label are T.C.. That's for Christina Chai.  
21 She was actually the pharmacist who generated that label. She  
22 is in the back of the pharmacy not dealing with the customers.  
23 Somebody is up front putting that H. there. And the person up  
24 front knows that the pharmacist is supposed to sign it. But  
25 you're not going to hear that my client dealt with the people

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Opening - Mr. Riopelle

1 who handed this prescription in. It was Ji Lee who did that.  
2 He put in his own father's initial on the front of this  
3 prescription, handed it back to Christina Chai who signed on  
4 the computer as Christina Chai, T.C., and she puts her own  
5 initials in there, because she has signed into the computer.

6 My client is not functioning as a pharmacist. And the  
7 same is true here with the second one, indictment paragraph 4G.  
8 There is a H. on there, sure enough, but there is the back of  
9 the prescription. If you look at it closely, again you see  
10 it's got the T.C. there. And that is absolutely consistent  
11 with the evidence you will hear from the dope dealers who came  
12 into the pharmacy. They will tell you that they dealt only  
13 with Ji Lee. He is the person taking the prescription. He is  
14 the person signing his father's initial on the front because he  
15 knows you have to have a pharmacist sign it. He is the person  
16 who passes it back to Ms. Chai, who doesn't know what's really  
17 happening up front, and she generates the label, because she is  
18 the pharmacist working in the back.

19 Now, you'll hear some testimony about the home that my  
20 client shared with his son. He and his son Ji lived together  
21 in that home, as is traditional for an Asian family.

22 You will hear that it was a house divided in some  
23 respects, in two important respects. First, it was physically  
24 divided. It's a sort of the equivalent of a two-family house,  
25 where mom and dad live on one floor and the children live on

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1 another floor. We all are familiar with that. In this case,  
2 it was a large house spread out on one level, but mom and dad  
3 lived in a little area off to the left, and Ji Lee and his wife  
4 and children lived off to the right. Separate living areas.  
5 You'll hear that my client and his son didn't interact much at  
6 home. It was a house divided emotionally as well. Didn't have  
7 a close relationship. They were a little bit estranged.

8 And you'll hear that cash was seized back at that end  
9 of the house, the other end of the house from where my client  
10 lived. It was seized in an office that Ji Lee used. It was  
11 seized -- it was hidden there, hidden there where no one could  
12 see it, until the DEA showed up with a search warrant.

13 I think you'll find I think the history will be at the  
14 end of the case, that that was cash that my client's son was  
15 hiding from him. I believe that's what you'll find.

16 Ladies and gentlemen, at the end of the trial you'll  
17 be asked to write the history of the Stanley Pharmacy in your  
18 verdict. There is some questions, ladies and gentlemen, that  
19 the evidence just won't ultimately answer, I don't believe.  
20 You won't get a complete answer to why Ji Lee did what he did,  
21 why he betrayed his father and his sister-in-law; why he  
22 engaged in that dope dealing. Was he angry? Did he feel  
23 trapped working in his father's business? Was it some kind of  
24 rebellion? I don't think you'll find that it was just about  
25 the money. Something more to it than that. But we won't hear

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1 from Ji Lee, and so I don't know that we'll ever be able to  
2 answer that question.

3 But there are some questions you will be able to  
4 answer, and those questions are whether my client ever dealt in  
5 oxycodone and ever distributed oxycodone intending to be a dope  
6 dealer. I think you'll answer that question no. I think  
7 you'll be able to answer the question, whether he ever engaged  
8 in a banking transaction for the purpose of laundering drug  
9 money. I think you'll find that he didn't know that the money  
10 he was depositing in the bank was the proceeds of some drug  
11 crime. So he didn't do that.

12 And I think at the end of the case the proof will  
13 show, and you will find, that my client did not knowingly  
14 engage in a pattern of structuring deposits for the purpose of  
15 concealing a drug dealing conspiracy. And, therefore, ladies  
16 and gentlemen, I believe your verdict, your history in this  
17 case will be that my client, Hi Jong Lee, is not guilty.

18 Thank you for listening to me this morning.

19 THE COURT: Thank you, Mr. Riopelle.

20 Call your first witness.

21 MR. TEHRANI: Your Honor, the government calls Carmen  
22 Catizone.

23 CARMEN CATIZONE,

24 called as a witness by the government,

25 having been duly sworn, testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. TEHRANI:

3 THE COURT: Please sit down, Mr. Catizone.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Pull yourself right up to the microphone.

6 Mr. Tehrani.

7 MR. TEHRANI: Thank you, your Honor.

8 Q. Mr. Catizone, how are you employed?

9 A. I'm a pharmacist with the National Association of Boards of  
10 Pharmacy.11 THE COURT: Is that on? I don't know the microphone  
12 is on.

13 THE DEPUTY CLERK: Now it is.

14 THE COURT: Speak right into the microphone.

15 THE WITNESS: Testing, testing.

16 THE COURT: That's better now.

17 THE WITNESS: Thank you.

18 A. I'm a pharmacist with the National Association of Boards of  
19 Pharmacy.

20 Q. And is that referred to sometimes as the NABP?

21 A. Yes, sir.

22 Q. What is your position with the NABP?

23 A. I'm the Executive Director.

24 Q. Can you please describe your educational background?

25 A. I have a Bachelors of Science in Pharmacy that I earned

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1 from the university of Illinois in 1983, and Masters in  
2 Pharmacy Administration, which I earned in 1987. And I'm  
3 licensed as a pharmacist in Illinois, and earned that license  
4 in 1983.

5 Q. And how did you become licensed?

6 A. I had to complete the Bachelor of Science program and pass  
7 the National Pharmacy Exam, as well as the state law  
8 examination.

9 Q. Now prior to your work with the NABP, were you a practicing  
10 pharmacist?

11 A. Yes, sir.

12 Q. For how long?

13 A. 14 years.

14 Q. In what types of pharmacies?

15 A. I worked in a community pharmacy, as well as a hospital  
16 pharmacy.

17 Q. And you may have said this already, but when did you join  
18 the NABP?

19 A. I joined in 1985.

20 Q. When did you become the Executive Director?

21 A. In 1988.

22 Q. And how were you appointed to that position?

23 A. There was a national search, and the committee then  
24 selected me as the final candidate, and I was hired as the  
25 Executive Director.

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1 Q. Now, when we've been talking about the National Association  
2 of Boards of Pharmacy, could you explain what that is?

3 A. It's a nonprofit organization whose members are the state  
4 agencies that regulate pharmacies and pharmacists. Pharmacists  
5 do not belong to NABP. Pharmaceutical companies do not belong  
6 to NABP. And the purpose of the association is to help states  
7 protect patients and protect the public health.

8 Q. And when was it founded?

9 A. It was founded in 1904.

10 Q. Could you describe what your duties and responsibilities  
11 are as the Executive Director of the NABP?

12 A. I oversee the operation of the association, and implement  
13 the policies that the states determine for the association.

14 Q. And what are some of the functions of the NABP?

15 A. We prepare the national licensing exam that all states  
16 require and use.

17 We also prepare state law examinations that 48 states  
18 utilize, and then we do the background check and disciplinary  
19 checks for pharmacists who want to transfer their license from  
20 one state to the other.

21 We also have accreditation services, and which we  
22 inspect pharmacies for the states, and then we assist the  
23 states in legislation and model regulations.

24 Q. And in your role as Executive Director, are you involved in  
25 all those things?

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1 A. Yes, sir.

2 Q. Focusing just for a minute on the licensing exams that you  
3 were speaking about, what do those licensing exams entail?

4 A. The national examination, which is called the NAPLEX,  
5 N-a-p-l-e-x, examines three major areas of a pharmacist's  
6 competence to practice.

7 The first is patient medication use and safety.

8 The second is the preparation of medications,  
9 pharmacists that make compound products.

10 And the third is public education and wellness; how  
11 the pharmacist communicates with patients and what they do to  
12 assist patients and understanding public health issues and  
13 wellness.

14 The law exams which we prepare consist of the  
15 individual state laws and the federal laws that apply across  
16 the board. But the examination is such, and it's computerized,  
17 so that when a pharmacist takes their individual state law  
18 exam. The questions are specifically geared to that state. So  
19 whatever the prevailing law is in that state, whether it's  
20 state law or federal law, the questions in the computer  
21 automatically selects those questions so the pharmacist has to  
22 know what the laws are in that particular state.

23 Q. Are both components required in every state?

24 A. Yes.

25 Q. And are pharmacists required to pass both components in

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1 order to be a licensed pharmacist?

2 A. Yes, sir.

3 Q. Now, prior to being appointed as Executive Director, did  
4 you serve in any other roles with the NABP?

5 A. Yes. I was a test and measurement director.

6 Q. And what did you do in that role?

7 A. I oversaw the examinations to make sure that the content  
8 was accurate and appropriate, and also that the examination was  
9 valid so that the questions asked what they were supposed to  
10 ask, and that the questions weren't trick questions or  
11 confusing questions, and that when a candidate was examined,  
12 that that score was a valid score for their level of  
13 competence.

14 Q. Does the National Association of Boards of Pharmacy  
15 maintain a data base of statutes and regulations for every  
16 state?

17 A. Yes, sir.

18 Q. Do you have access to that data base?

19 A. Yes, I do.

20 Q. In connection with your role with the NABP, have you become  
21 familiar with the standards of pharmacy practice?

22 A. Yes, sir.

23 Q. Including in New York?

24 A. Yes, sir.

25 Q. Have you published in the field of pharmacy practice?

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1 A. Yes, I have.

2 Q. Approximately how many publications?

3 A. Approximately a hundred publications.

4 Q. And can you give just some general examples of some of the  
5 things that you published?

6 A. The presentations have focused on what state laws and  
7 regulation are, and what the standards of practice may be. So  
8 I've published on competence of a pharmacist, published on what  
9 some of the requirements are for pharmacist in individual  
10 states, published on what some of the dangers of medication use  
11 are and what fraud and abuse might be, and that the pharmacist  
12 would be familiar with or identify.

13 Q. In what types of publications have you published?

14 A. They've been published in both professional journals that  
15 are reviewed by peers. They've also appeared in public domain,  
16 Wall Street Journal, U.S.A. Today, local newspapers, any  
17 information sources that people may rely upon.

18 Q. Have you taught in the field of pharmacy practice?

19 A. Yes, I have.

20 Q. Where?

21 A. During my graduate studies, I taught statistics as part of  
22 the graduate program to pharmacy students at the University of  
23 Illinois.

24 I also served as an adjunct faculty member once I was  
25 graduated and licensed with the University of Illinois in the

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1 area of pharmacy administration, and I served as an adjunct  
2 faculty member for the DEA at the Quantico facilities in  
3 Virginia where I teach DEA agents on drug diversion and  
4 pharmacy issues.

5 Q. You mentioned the term drug diversion. We'll get to that  
6 in a minute.

7 But would you just explain, since you mentioned it,  
8 what drug diversion is?

9 A. The term is used and defined when somebody obtains  
10 medications inappropriately and then diverts or uses those  
11 medications for other purposes; to sell those medications, to  
12 abuse those medications, and not for the purpose that they're  
13 intended for or they should be prescribed for.

14 Q. Mr. Catizone, have you testified before any legislative  
15 bodies on the subject of pharmacy practice?

16 A. Yes, I have.

17 Q. Which ones?

18 A. I've testified before the Legislature or the Boards of  
19 Pharmacy in every state but Alaska.

20 Q. And what about the federal government?

21 A. I've appeared before both the Senate and House Committee to  
22 talk about issues involving pharmacy practice and pharmacy  
23 regulation.

24 Q. Have you testified in administrative proceedings in the  
25 field of pharmacy practice?

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1 A. Yes, I have.

2 Q. Have you testified in court proceedings as an expert in the  
3 field of pharmacy practice?

4 A. Yes, I have.

5 Q. Approximately how many times?

6 A. Approximately ten criminal cases at the federal level, and  
7 probably about ten or so at the administrative hearings in both  
8 the state and federal level.

9 MR. TEHRANI: Your Honor, at this time we move to  
10 qualify Mr. Catizone as an expert in the field of professional  
11 standards relating to pharmacy practice?

12 THE COURT: Any objection?

13 MR. AGNIFILO: No, Judge.

14 MR. RIOPELLE: No objection, Judge.

15 THE COURT: He's recognized as an expert.

16 Q. Now, Mr. Catizone, what city are you based?

17 A. Chicago.

18 Q. And who paid for your travel to New York and your  
19 accommodations here?

20 A. My expenses are being reimbursed by the U.S. Attorney's  
21 Office.

22 Q. Are you being compensated by the government in any other  
23 way?

24 A. No, sir.

25 Q. So who pays for the time you devoted to your testimony?

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1 A. As part of my responsibilities and the purpose of the  
2 association to help the states protect the public, part of my  
3 salary is devoted to these activities.

4 Q. Mr. Catizone, are pharmacies assist regulated?

5 A. Yes, sir.

6 Q. By whom?

7 A. By the State Boards of Pharmacy, as well as by the Food and  
8 Drug Administration and the Drug Enforcement Administration  
9 with different laws that are enacted at the federal level.

10 Q. What is a State Board of Pharmacy?

11 A. A state board of pharmacy is a state agency that's been  
12 created by the State Legislature to oversee the practice of  
13 pharmacy, and to make sure that pharmacists are competent, and  
14 that patients are protected by the oversight of that state  
15 board of pharmacy.

16 Q. And those are the entities that are members of the NABP?

17 A. Yes, sir.

18 Q. Now what is the source of the standards governing  
19 pharmaceutical practice?

20 A. Standards come from a number of different sources. One is  
21 professional practice and the standards that pharmacists and  
22 prescribers and others deem important for the use and  
23 prescribing dispensing medication.

24 Other standards come from the Legislature, when they  
25 decide if there's something that's needed to protect patients.

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1                   And other standards come from standards setting  
2 organizations that look at how medications are dispensed or  
3 prescribed, and what some of those standards need to be.

4 Q. Mr. Catizone, are you familiar with the term "controlled  
5 substance"?

6 A. Yes, I am.

7 Q. Briefly, what is a controlled substance?

8 A. A controlled substance is a subset of prescription drugs,  
9 and it's a medication that has a high abuse for harm and  
10 potential addiction.

11 Q. And are controlled substances classified further in any  
12 way?

13 A. Yes, they are.

14 Q. How so?

15 A. They are subdivided into five categories. And the first  
16 category, schedule one, is reserved for drugs that have no  
17 medical purpose. Those are -- that's a drug like heroin.

18                   Schedule two means that the drug has a medical  
19 purpose, but the potential for harm to the patient and abuse or  
20 addiction is extremely high. That would be a product like  
21 oxycodone or morphine.

22                   Schedules three, four and five decrease in terms of  
23 their potential for abuse and harm, and would include drugs  
24 like Xanax or Ativan or Valium, that have a medical purpose,  
25 but also have a potential for abuse or harm, but that potential

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1 is less than a product in the schedule two.

2 Q. Now, in order for a pharmacist to dispense a controlled  
3 substance, what, if anything, is required?

4 A. The prescriber, the doctor who writes that prescription has  
5 to be registered with the DEA and have a valid DEA number.

6 Similarly, the pharmacy at which the pharmacist works,  
7 they must also be registered with the DEA.

8 Q. So the pharmacy has a DEA registration, not necessarily the  
9 pharmacist?

10 A. Correct.

11 Q. Now, you mentioned oxycodone a little bit ago. What is  
12 oxycodone?

13 A. Oxycodone is a medication that's used to treat pain.

14 Q. And you mentioned that it's schedule two?

15 A. Yes, sir.

16 Q. So again what does that mean about oxycodone?

17 A. It means that it has the potential to cause harm to the  
18 patient, and that some of the harm that's been documented as  
19 part of the medication actually decreases the patient's  
20 breathing muscles and breathing system. So it could cause a  
21 pain to have a significant reaction or serious injury.

22 It also is a medication that could be easily abused or  
23 a patient also becomes addicted to, and there is a high  
24 potential for that occurring.

25 Q. Now what is it about oxycodone that makes it susceptible to

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1 abuse?

2 A. The product itself creates a euphoria or a high, and the  
3 people who abuse that medication enjoy that or seek that  
4 euphoria and that high from the medication.

5 Q. Do you know whether or not people can get desensitized to  
6 oxycodone?

7 A. Yes.

8 Q. And what does that mean?

9 A. What that means is that by taking the medication over a  
10 long period of time, your body builds a tolerance to that  
11 medication so that you have to take more of it to achieve the  
12 same results. And that could happen for both legitimate uses  
13 and for abuse uses.

14 So if you're taking it for pain and taking it for a  
15 long period of time, the dose you have to take may have to be  
16 increased over a long period of time. And if you're taking it  
17 for euphoria or abuse purposes, again, you'd have to take more  
18 of it as your body builds up tolerance to it.

19 Q. Now you discussed a little bit ago about what diversion is.  
20 Can you just explain again what diversion is?

21 A. Diversion takes many forms, but the best way to describe it  
22 would be somebody obtains a prescription or uses a prescription  
23 to obtain medicines that they shouldn't have, that there is no  
24 medical purpose for. And then they take that medication and  
25 either abuse it themselves or they sell the medication, or they

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1 do something with that medication that is not intended to be  
2 used for or prescribed for.

3 Q. Now, you referred to it from a perspective of a customer.  
4 But can a pharmacy also be involved in diversion?

5 A. Yes.

6 Q. And a physician can also be involved in diversion?

7 A. Yes.

8 Q. Do you know whether or not oxycodone is a controlled  
9 substance that is typically diverted?

10 A. Yes.

11 Q. And why is that?

12 A. Again, the drug itself creates a high euphoria the people  
13 seek, and oxycodone and hydrocodone, which is a derivative --  
14 they're both derivatives of morphine -- are the two most abused  
15 drugs in the entire United States. And depending upon the  
16 region, it's either oxycodone is the number one or hydrocodone  
17 is number one. And in the northeast region here oxycodone is  
18 the number one abused drug.

19 Q. Does oxycodone come in different dosages?

20 A. Yes.

21 Q. Could you explain what a dosage is?

22 A. Sure. Dosage is the strength of the medication that's  
23 determined to be used for certain indication.

24 Q. And how is that typically noted; how are dosages measured?

25 A. With the particular product oxycodone, it really has -- it

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1 can be broken down into really two primary categories. There's  
2 temporary severe pain, and then there's long term pain.

3 So the temporary severe pain would be if you broke a  
4 bone or had some surgery and you were going to be in severe  
5 pain, but it was going to be for a limited amount of time, the  
6 usual dose for that pain treatment is 10 to 15 milligrams every  
7 four to six hours for a very limited time period; few days,  
8 maybe a few weeks maximum.

9 The other type of pain is the type of pain you see  
10 with cancer patients, or patients that have back pain that  
11 they've had for years and not able to treat. That requires the  
12 patient to be on oxycodone for a significant period of time.  
13 And the doses for that treatment are much higher. They're in  
14 the 80-milligram range. They're also the extended release or  
15 sustained release tablets, which means when the patient takes  
16 it the way the medication's formulated, it dissolves and works  
17 throughout a long period of time so the patient doesn't have to  
18 keep taking the medications. Those patients have to be  
19 carefully monitored, and the pain management therapy very  
20 carefully adhered to so the patient's not harmed.

21 The literature and the recommended dosing by the Food  
22 and Drug Administration says that when you exceed a  
23 30-milligram dose, it should be done with extreme caution, and  
24 that also the maximum amount of oxycodone taken per day should  
25 be about 100 milligrams.

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1                   So if you go back to the severe pain, which is the  
2 category we're talking about a dose of 10 to 15 milligrams  
3 every four to six hours, would mean that the patient shouldn't  
4 really take any more than four or eight tablets per day  
5 depending upon the strength.

6                   The 30-milligram dose falls completely outside of both  
7 of those areas of pain. It's much stronger than the ten to 15.  
8 It's not as strong as the 80 or sustained release. And the  
9 literature specifically says doses over 30 milligrams should be  
10 measured and should be managed with extreme caution.

11                  What's also been made available and known to  
12 pharmacists through the Boards of Pharmacy and through the Drug  
13 Enforcement Administration is that the 30-milligram dose is the  
14 most abused form of oxycodone in the entire nation.

15 Q. Mr. Catizone, I'd now like to ask you some questions about  
16 pharmacy practice at a brick and mortar pharmacy.

17                  At the outset, do you know what I mean by brick and  
18 and mortar pharmacy

19 A. Yes, sir.

20 Q. And what does that generally mean?

21 A. Typical pharmacy that you find on the corner in your  
22 neighborhood, Duane Reade, CVS. Those are brick and mortar  
23 pharmacy.

24 Q. Now, according to the professional standards of the  
25 practice of pharmacy, what does a pharmacist need to do prior

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1 to filling a prescription?

2 A. All of the state practice acts and regulations require that  
3 the pharmacist conduct an evaluation of that prescription. And  
4 terminology that's used across all states is that the  
5 pharmacist conduct a drug use evaluation. And what that means  
6 is the pharmacist has to look at that prescription and  
7 determine whether or not it's appropriate for that patient, and  
8 appropriate for what the indication for that medication is the  
9 prescriber wrote.

10 So if a patient comes in and they're suffering from  
11 diabetes or high blood pressure, then that medication should be  
12 for diabetes or high blood pressure. It should also be the  
13 appropriate strength. It shouldn't be too strong or not as  
14 strong as needed so that the patient doesn't receive the right  
15 amount of medication.

16 And the quantity that's prescribed should also be for  
17 the time period that patient needs. With those non-controlled  
18 substances, it's usually a 30 day period. So looking at what  
19 the directions are, what the strength is, the pharmacist should  
20 make sure that it's the right quantity of medication. They  
21 should also look at the patient's allergies, other medications  
22 they're taking to make sure there is no interactions.

23 Besides that evaluation, there's also the requirement  
24 that the pharmacist make sure that it's a valid prescription;  
25 that the prescriber is a valid prescriber; that they're writing

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1 prescriptions within their scope of practice so that we don't  
2 have doctors that treat children, pediatricians, writing  
3 prescriptions for adults. It would be outside of their scope  
4 of practice. Or you don't have prescribers that are writing  
5 for medications that they have no authority to write because  
6 they're not registered with the DEA, or they've not registered  
7 with the state appropriately.

8 They must also determine if there is an appropriate  
9 relationship between the patient and the prescriber. And they  
10 must look at other factors to see whether or not that  
11 prescription's valid, and if it's not or they suspect that it  
12 may be fraudulent or invalid, then they are legally responsible  
13 to not fill the prescription and notify law enforcement.

14 Q. Now, are these standards of practice for pharmacies, the  
15 same throughout the United States?

16 A. Yes, sir.

17 Q. Do they govern the practice of every pharmacist practicing  
18 in the United States?

19 A. Yes, sir.

20 Q. How do a pharmacist's responsibilities relate to those of a  
21 physician with respect to the dispensing of prescribed  
22 medication?

23 A. The physician is responsible for the prescribing, but the  
24 pharmacist has a corresponding responsibility that's spelled  
25 out in federal law, and also spelled out in state law, that

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1 says the pharmacist must authenticate and validate those  
2 prescriptions are legitimate, and that there is not any fraud  
3 or abuse or diversion occurring with those prescriptions.

4 Q. Is a pharmacist required to fill every prescription that is  
5 presented to him or her?

6 A. No, sir.

7 Q. So as a practical matter, how does a pharmacist fulfill  
8 these obligations?

9 A. If it's a non-controlled substance, and let's say the  
10 prescription's written for medication that would harm the  
11 patient and the pharmacist would fill that and the patient  
12 would be harmed, that would be a problem for the pharmacist and  
13 a violation, and action could be taken against that  
14 pharmacist's license.

15 For controlled substance, the pharmacist has to verify  
16 that the prescriber's legitimate, they have to verify their DEA  
17 number, they have to verify that the medication exists and was  
18 written because it was a legitimate relationship between the  
19 doctor and the patient, and they also have to verify that the  
20 patient is not abusing or diverting or selling that product for  
21 other purposes.

22 Q. And in order to do that, does a pharmacist need to be able  
23 to observe a patient?

24 A. Yes, sir.

25 Q. And obtain background information about the patient?

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1 A. Yes, sir.

2 Q. Are there requirements as far as what is required to be on  
3 a prescription?

4 A. Yes, sir.

5 Q. And what are those?

6 A. The patient's name, the patient's address, the name of the  
7 drug, the direction for taking the drug, the number of refills,  
8 the doctor's name and the doctor's address and phone number,  
9 and if it's a controlled substance, the doctor must physically  
10 sign that prescription.

11 Q. Is a physician, I'm sorry, a pharmacist ever required to  
12 call a physician about a prescription?

13 A. Any time there is suspicion that the prescription may be  
14 invalid or fraudulent, the pharmacist has responsibility to  
15 call or verify, or whatever means possible, to authenticate  
16 that the prescriber's legitimate and that the prescription is a  
17 valid prescription.

18 Q. And, in your experience, should a pharmacist call more  
19 often for oxycodone prescriptions as opposed to other types of  
20 prescriptions?

21 A. Based on my experience and the literature, when you have  
22 product that's a schedule two controlled substance with the  
23 potential for harm and abuse, that certainly would require more  
24 diligence than a prescription for high blood pressure or  
25 diabetes.

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1 Q. Now, how, if at all, does the quantity of pills and  
2 prescription relate to a pharmacist's duty to inquire of a  
3 physician?

4 A. The quantity is part of the information that the physician  
5 or the doctor sends to the pharmacist, for the pharmacist then  
6 to make a professional judgment and dispense the medication.  
7 The quantity has to coincide with what the medication is and  
8 what the course of therapy should be.

9                   So, again, when we're dealing with pain medications,  
10 we're looking at a short period of time. And so when you see a  
11 prescription that may be for 10 or 15 or 30 tablets and that  
12 coincides with what the drug should be used for and for how  
13 long, that would validate and justify that prescription and say  
14 it's appropriately written and appropriately prescribed.

15                   When you get totals that exceed that and exceed that  
16 by significant number 100, 120, 180, those are red flags that  
17 call into question that prescription, that therapy, and even  
18 that prescriber.

19 Q. So under the standards of professional pharmacy practice,  
20 can a pharmacist just look at the face of a prescription, rely  
21 on the information on the prescription and fill a prescription?

22 A. No, sir.

23 Q. Why not?

24 A. The face of the prescription only tells part of or only  
25 contains part of the information that the pharmacist may need.

E9azcha2

Catizone - direct

1 There can be an error on that prescription; the doctor wrote  
2 the wrong drug; the doctor wrote the wrong quantity, the wrong  
3 strength, or there could be something on the face of that  
4 prescription that suggests that there's something else going on  
5 here or that the pharmacist needs to verify.

6 So just simply the relying on the prescription at face  
7 value doesn't meet responsibilities the pharmacist has.

8 Q. What is a pharmacist supposed to do if he or she cannot  
9 verify a prescription?

10 A. For a non-controlled substance, the pharmacist has to use  
11 the professional judgment. So if we're talking again about  
12 diabetes or high blood pressure, the pharmacist may be able to  
13 give that patient a few tablets so that the patient doesn't  
14 suffer any serious injury.

15 But for a controlled substance, particularly a pain  
16 medication, the pharmacist has first responsibility to make  
17 sure that that medication isn't abused or diverted. And so the  
18 first option would be not to fill the prescription and help the  
19 patient or direct the patient to an emergency room or some  
20 other area where they could seek treatment and perhaps get the  
21 medications filled there.

22 Q. Is there an identification requirement to fill a controlled  
23 substance prescription?

24 A. Yes, sir.

25 Q. And what does that mean?

E9azcha2

Catizone - direct

1 A. That means that the patient or care giver that's picking up  
2 the medication, and even to dropping off the prescription, is  
3 the person who they are supposed to be or the prescription  
4 says. And regulations in New York says that the pharmacist has  
5 to make a reasonable effort to ascertain the identity of the  
6 patient by looking at or examining some form of identification.

7 Q. Can a customer fill prescriptions for controlled substances  
8 for multiple people at the same time?

9 A. They can't fill prescriptions for other people,  
10 particularly in controlled substances. And in some cases if  
11 there is a care giver and that care giver has been documented  
12 with the pharmacy, somebody taking care of their elderly  
13 patients, their parents or maybe even children, that care giver  
14 on record could pick up prescriptions or could drop off  
15 prescriptions for those individuals. But simply going into a  
16 pharmacy and bringing in multiple prescriptions for multiple  
17 patients or picking those up is not something that would be  
18 allowed.

19 Q. Is the pharmacist who fills a prescription required to be  
20 documented in some way?

21 A. The initials or identifying marks or name of the pharmacist  
22 must appear in that prescription record.

23 Q. Would you agree that a pharmacist's job is basically to  
24 count pills?

25 A. No, sir.

E9azcha2

Catizone - direct

1 Q. Why not?

2 A. That goes beyond what I talked about earlier, that the  
3 pharmacist has to conduct a drug use evaluation; that they have  
4 to evaluate the prescription and make sure it's appropriate for  
5 the patient; that it's safe, and that they also must look at  
6 whether or not any fraud or abuse is occurring on that  
7 prescription.

8 Q. Mr. Catizone, how are pharmacists informed about these  
9 standards or responsibilities?

10 A. First of all, it's part of their formal education and  
11 training. There are law courses the pharmacists are required  
12 to take in order to graduate. And the law courses continue  
13 throughout their degree program.

14 They're also informed by the State Board of Pharmacy  
15 of the requirements or any changes. And then the pharmacist  
16 must maintain their license by completing continuing education  
17 courses in the programs.

18 Q. And starting at the beginning, can you explain the  
19 educational process for pharmacists?

20 A. The pharmacist undergoes a four or five year professional  
21 program, and during that time they are educated on the medical  
22 or clinical aspects of medications. So they learn anatomy,  
23 they learn biology, and then they learn how medications  
24 actually work from the chemistry standpoint, as well as how  
25 they work inside the body and how they interact with other

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Catizone - direct

1 drugs.

2 From the beginning of their programs, through the very  
3 end, pharmacy laws is a primary component of that instruction  
4 as well. So they learn about what's a legal prescription, they  
5 learn what the requirements are, and they learn what they have  
6 to do to be in compliance with both federal and state law  
7 throughout their program.

8 Q. And the potential for diversion is something that is taught  
9 during the educational process?

10 A. Yes. There are specific courses and specific information  
11 that the pharmacists take and engage in that teaches them about  
12 diverted -- diversion and abuse. It even talks about what  
13 types of practitioners may be involved. It talks about how  
14 doctors can be duped by patients. And it talks about the  
15 warning signs that pharmacists should look for and should know  
16 when presented with a fraudulent or possibly fraudulent  
17 prescription.

18 Q. And is a pharmacist's education all classroom based?

19 A. No, it's not. The majority of it is classroom based, but  
20 then pharmacists engage in experiential education, which  
21 actually puts them in real pharmacies. It begins in the very  
22 first year, and then by their last year it's very intense,  
23 takes up most of that year and most of the time are spent in  
24 the program.

25 Q. And then after someone graduates from pharmacy school,

E9azcha2

Catizone - direct

1 there is a licensing examination?

2 A. Yes. The examination that we prepare is required of all  
3 pharmacists in all states.

4 Q. Including in New York?

5 A. Yes, sir.

6 Q. And New Jersey?

7 A. Yes, sir.

8 Q. How long have there been licensing exams?

9 A. The first exams started in about 1860.

10 Our examination has been used and required by the  
11 state since 1979.

12 Q. Now, I know you explained this before, but could you again  
13 explain the components of the licensing examination?

14 A. Sure. There are three primary areas.

15 First is medication use and therapy, the second is the  
16 actual preparation of medications, and then the third is public  
17 education and counselling.

18 Q. And it's broken down into two tests?

19 A. That's the national examination. And then there's a law  
20 exam. That's a separate exam that involves state practice act  
21 and regulations. It includes federal law and state law, and  
22 talks about what the pharmacist must do or examination what the  
23 pharmacist must do to be in compliance. And it also examines  
24 diversion and fraud and what the pharmacist needs to know to  
25 detect and prevent and to address those issues.

E9azcha2

Catizone - direct

1 Q. So those diversion concepts are tested on the state law  
2 exam?

3 A. Yes, sir.

4 Q. Is NABP involved in transferring licenses from one state to  
5 another?

6 A. Yes, sir.

7 Q. And how does that process work?

8 A. Any pharmacist that wants to move from one state to the  
9 other submits an application to us. We review the information  
10 about that pharmacist, where they've been licensed, whether  
11 there is any disciplinary action, what their educational  
12 background is and what their test scores are, and we prepare  
13 that information and send it to the state where the pharmacist  
14 is seeking to transfer license or to practice.

15 Q. And then in order to actually be licensed in more than one  
16 state, is there -- are there additional examination  
17 requirements?

18 A. Yes. They do not have to retake the national exam, but  
19 they have to take the law exam for each of those states.

20 Q. And so in order for a pharmacist to be registered in more  
21 than one state, that pharmacist has to take the legal exam in  
22 each state?

23 A. Yes, sir.

24 Q. And that's the component of the licensing exam and test on  
25 diversion?

E9azcha2

Catizone - direct

1 A. Yes, sir.

2 Q. Are there continuing educational requirements for  
3 pharmacists?

4 A. Yes, there are.

5 Q. In New York?

6 A. Yes, there is.

7 Q. What about New Jersey?

8 A. Same, yes.

9 Q. And what are those requirements generally?

10 A. Pharmacist has to complete 15 hours of continuing education  
11 that's approved by each of those Boards, New Jersey, New York.  
12 And in New Jersey a pharmacist's license is renewed every two  
13 years, and so the pharmacist has to complete 15 hours per year  
14 for a total of 30.

15 And in New York, pharmacist is licensed every three  
16 years and the pharmacist has to earn 15 hours of continuing  
17 education every year, so a total of 45 hours.

18 Q. Are you familiar with the term "pharmacist in charge" or  
19 "supervising pharmacist"?

20 A. Yes, sir.

21 Q. And are those terms the same?

22 A. Yes, sir.

23 Q. Which one is used in New York?

24 A. Supervising pharmacist.

25 Q. What is a supervising pharmacist?

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Catizone - direct

1 A. A supervising pharmacist is responsible for the overall  
2 operations of the pharmacy to make sure it's in compliance with  
3 federal and state laws. And that pharmacist is also  
4 responsible and held accountable for all the activities in that  
5 pharmacy, including the activities of the other pharmacists and  
6 the technicians that may assist in the practice of pharmacy.

7 Q. Does every pharmacy have to have a supervising pharmacist?

8 A. Yes.

9 Q. Does being a supervising pharmacist require additional  
10 training?

11 A. Because of the added responsibilities of a supervising  
12 pharmacist in terms of management and the supervision and the  
13 responsibilities, it's not a legal requirement, but many  
14 pharmacies and many companies require additional training.

15 Q. Now what about the owner of a pharmacy, what  
16 responsibilities does an owner have?

17 A. The owner has the same overall responsibilities as a  
18 supervising pharmacist. And in New York in the practice act  
19 regulations, the owners are specifically mentioned and noted to  
20 have the same overall responsibilities as a supervising  
21 pharmacist.

22 Q. Now, you used the term previously a "tech." Is that short  
23 for pharmacy technician?

24 A. The pharmacy technicians that assist the pharmacist, the  
25 pharmacists in charge and the other pharmacists are accountable

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Catizone - direct

1 for those actions of that person.

2 Q. Just to step back. A tech is shorthand for pharmacy  
3 technician?

4 A. Yes, sir.

5 Q. And just briefly, what is a pharmacy technician?

6 A. Pharmacy technician is somebody that helps the pharmacist.

7 They can work the cash register, they can process insurance  
8 claims. They may be able to take medications off the shelf and  
9 then fill the bottles. But those medication and everything the  
10 technician does must be checked and overseen directly by the  
11 pharmacist.

12 Q. Can a pharmacy technician count pills?

13 A. Yes.

14 Q. And is a pharmacy technician allowed to dispense  
15 medication?

16 A. Not without a pharmacist being present in the pharmacy.

17 Q. Controlled substances?

18 A. Again, not without a pharmacist there. And requirements  
19 and restrictions of technician access to controlled substances  
20 are much different than medications that are not controlled.

21 Q. Can a pharmacy dispense medication without a pharmacist  
22 present?

23 A. No.

24 Q. Who is ultimately responsible for filled prescription?

25 A. The pharmacist who has filled that prescription, as well as

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Catizone - direct

1 the supervising pharmacist if it's a different person.

2 Q. How does a pharmacist comply with his or her obligations  
3 when the pharmacist is being assisted by a tech?

4 A. The pharmacist is responsible for anything that happens in  
5 that pharmacy or with that technician. So everything the  
6 technician does is ultimately the pharmacist's responsibility.

7 Q. And as a practical matter, how does that responsibility  
8 play out?

9 A. The pharmacist has to be able to observe that technician at  
10 all times. They have to sign off on all of the activities that  
11 the technician engages in, and nothing should leave that  
12 pharmacy or should be entered into that patient's records  
13 unless the pharmacist has checked and approved that record or  
14 that action.

15 Q. Now, do any of the corresponding responsibilities that  
16 we've been talking about ever get transferred from the  
17 pharmacist to any other pharmacy employee?

18 A. No, sir.

19 Q. What is a pharmacist supposed to do if the pharmacist does  
20 disagrees with a pharmacy technician about whether to fill a  
21 prescription?

22 A. The pharmacist has the ultimate responsibility and  
23 accountability. And it's the pharmacist's decision  
24 professional judgment. And it wouldn't make sense for a  
25 technician to overrule the pharmacist, unless the technician

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Catizone - direct

1 noticed something that was violating the law or could injure  
2 the patient.

3 But, again, it would fall back to the pharmacist, who  
4 has the ultimate decision responsibility.

5 Q. I'd like to switch gears now and talk a little bit about  
6 indications of drug diversion. And I think you previously  
7 used --

8 THE COURT: Mr. Tehrani, before we get into that, why  
9 don't we take our Honor morning recess.

10 MR. TEHRANI: Certainly, your Honor.

11 THE DEPUTY CLERK: All rise.

12 THE COURT: The jury can step out.

13 (Continued on next page)

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Catizone - direct

1 (In open court; jury not present)

2 THE COURT: Okay, we'll resume at 10:30 or 11:30,  
3 excuse me.

4 When do you want the instruction? I'm waiting for  
5 somebody.

6 MR. RIOPELLE: Somebody to stand up and say something,  
7 yeah. I think we're at the point now where it might be good to  
8 do it. It would be agreeable to me to do it right when we come  
9 back from the break, Judge. Because we're now getting to the  
10 regulations and that sort of thing.

11 THE COURT: Mr. Tehrani?

12 MR. TEHRANI: No objection.

13 THE COURT: Okay. See you at 11:30.

14 MR. RIOPELLE: Thank you, Judge.

15 (Recess)

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Catizone - direct

1 (In open court; jury not present)

2 THE COURT: Please sit down.

3 THE DEPUTY CLERK: All rise.

4 (Jury entering)

5 THE COURT: Please be seated.

6 Before we resume with Mr. Tehrani's examination of Mr.  
7 Catizone, I'm going to allow Mr. Catizone to describe for you  
8 various regulatory standards that apply to licensed pharmacists  
9 here in New York. And he'll be permitted to testify to his  
10 opinion as to whether or not the Stanley Getty Pharmacy  
11 violated those regulatory standards.

12 As you know, this is a criminal case, not a regulatory  
13 case. The failure to comply with regulations does not alone  
14 provide the basis for concluding that either the defendants is  
15 guilty of the crimes charged in count one.

16 Rather, count one has very specific elements, each of  
17 which the government must prove beyond a reasonable doubt,  
18 separate and apart from whatever regulations govern the  
19 pharmacy's operation.

20 Now that said, the failure to comply with regulations  
21 is a factor that you can consider in determining whether either  
22 of the defendants knowingly participated in the unlawful  
23 distribution of oxycodone.

24 Now, on Monday I told you about credibility and how  
25 your assessment of credibility is very important. It's up to

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1 you to decide which witnesses to believe and which witnesses  
2 not to believe, and how much of each or any witness' testimony  
3 to accept or reject. And that's true of Mr. Catizone's  
4 testimony, even though he's testifying as an expert.

5 He'll be allowed to express his opinions as to what a  
6 pharmacy should have known about examining the prescriptions in  
7 this case. But you are the judges of the facts, and you must  
8 decide for yourself whether either the defendants knowingly  
9 participated in the unlawful distribution of oxycodone.

10 All right, Mr. Tehrani.

11 MR. TEHRANI: Thank you, your Honor.

12 BY MR. TEHRANI:

13 Q. Mr. Catizone, before we broke we were just about to start  
14 talk about indications of drug diversion, and I wanted to use  
15 the word red flags. Is that a term that's typically used?

16 A. Yes, sir.

17 Q. Now, what are some red flags that should alert a pharmacist  
18 that customers are involved in diversion?

19 A. Some of the immediate signs that a pharmacist would see is  
20 if the patient comes in into the counter and are intoxicated,  
21 or perhaps they look like they're high or they're disoriented.

22 Some other signs would include the actual prescription  
23 itself as being presented, does it look like it's been altered?  
24 Does it look like that prescription has not been issued by the  
25 prescriber?

E9azcha2

Catizone - direct

1                   And then there is the other behaviors of the patient  
2 that could serve as a red flag. Is the patient using street  
3 jargon and drug names for the medications they're seeking? Are  
4 they intimidating to the pharmacist? Are they trying to  
5 persuade or to threaten the pharmacist to fill the prescription  
6 and to avoid doing any of the things the pharmacy is supposed  
7 to do?

8 Q. Now what about the frequency with which a customer is in a  
9 pharmacy?

10 A. There are other red flags that may not be immediately known  
11 or may be immediately obvious. But when you have chance to  
12 review or you look at those red flags in combination with other  
13 red flags, then they lead to the same conclusions, that there  
14 is a problem or suspicion here.

15                   And that could be for patients that come in all the  
16 time very frequently for pain medications. Because if the pain  
17 medication's written appropriately, that patient should be in  
18 the pharmacy a reasonable amount of time but not all the time.

19                   If they're getting multiple prescriptions from  
20 different doctors, that would be another red flag.

21                   If they're bringing in groups of patients at the same  
22 time, that would be another red flag that the pharmacist could  
23 look at and reach some conclusions with.

24 Q. Now, are there any red flags from the quantities or dosages  
25 that are on prescriptions themselves?

E9azcha2

Catizone - direct

1 A. As I mentioned earlier, that quantity's very important to  
2 determining whether or not the prescription is appropriate or  
3 legitimate. So if patients are coming in for large quantities  
4 and you see one patient after the other, or patients are coming  
5 in and they're getting the same quantity from different  
6 prescribers or the same prescriber, and that's an excessive  
7 quantity, that would be a red flag for the pharmacist as well.

8 Q. Now, what are some indications that a customer is trying to  
9 use a prescription from a stolen prescription pad?

10 A. When you look at the prescription itself, there would be  
11 some warning signs on there.

12 One, the prescription would have information on there  
13 that wouldn't normally be on a prescription. So, for example,  
14 doctors and pharmacists rely upon abbreviations. So the letter  
15 Q means every, and it's fairly common, fairly standard. You  
16 might see these prescriptions that contain the word every  
17 written out. And so the abbreviations are written out instead  
18 of use. I saw that on some of the prescriptions I reviewed.

19 There is other markings on the prescription that  
20 wouldn't appear. They write out tablets, they write out  
21 capsules, they write out quantities for refills that don't  
22 coincide with the information and the dosing, or the doctor's  
23 signature. If it look like there is a problem, something  
24 suspicious with the doctor's signature or information.

25 Q. What about the numbering of the prescription?

E9azcha2

Catizone - direct

1 A. What's unique in New York is New York requires every  
2 prescription, whether it's controlled or non-controlled, to be  
3 issued on a state required prescription. No other state  
4 requires that. So in other states the doctors have different  
5 prescription pads that can be different colors, different  
6 shapes, different information that may be included beyond the  
7 required.

8 In New York, every prescription has to be on the same  
9 prescription pad, the same color. And these prescriptions are  
10 all numbered so that a doctor would have a prescription pad  
11 issued by the state just like a checkbook that would run from  
12 one to 100 or one to 1,000 whatever the sequence would be, and  
13 those are sequential to the doctor, and the doctor would write  
14 those prescriptions based on seeing patients.

15 Q. And would there be anything about sequential prescriptions  
16 that would be a red flag?

17 A. What would normally happen in practice, based on my  
18 experience, as doctors see different patients at different  
19 times. So when a pharmacy may have several prescriptions from  
20 a doctor, but those numbers would be different and vary. They  
21 wouldn't be in order.

22 When you see prescriptions from one doctor that run  
23 consecutively like one to 50, that would indicate that those  
24 prescription pads were either stolen or something else was  
25 occurring. Because the practice wouldn't happen that the same

E9azcha2

Catizone - direct

1 50 patients would go to the doctor one after the other to be in  
2 sequence for those prescriptions to be written, and those same  
3 50 patients would be, would present to the same pharmacy.

4 Patients don't all go to the same pharmacy. Some patients  
5 don't even get the prescriptions filled. So the likelihood of  
6 that happening in practice doesn't exist, and it can only be  
7 explained by that prescription pad was stolen or something else  
8 happened in that prescription pad for that sequence to occur as  
9 it did.

10 Q. What about a doctor only prescribing a particular  
11 medication?

12 A. Again, in normal practice traditional practice that I've  
13 experienced, even with non-controlled substance, if a patient  
14 has diabetes or high blood pressure, the doctor's going to have  
15 certain medications that they prescribe, and it's going to vary  
16 from patient because different patients have different age,  
17 different sex, different sizes, and it will be a different  
18 reaction those patients have to medications. And I'm not aware  
19 of any doctor that prescribes just one medication for a disease  
20 or a symptom for every patient.

21 On the pain management side, for a doctor just to  
22 write one medication, the same medication for every patient,  
23 the same dose, the same strength, the same quantity is not  
24 something that occurs in practice. It says that every patient  
25 is the same and that every patient has the same disease or

E9azcha2

Catizone - direct

1 symptom and every patient has the same allergies, and are  
2 taking the same medications that would interact with that  
3 medication, and it simply is not the case. It points to  
4 something else, fraud abuse or diversion that's occurring.

5 Q. Now, you mentioned a situation where a customer is in a  
6 pharmacy and has prescriptions from multiple doctors. Is that  
7 referred to as doctor shopping?

8 A. Yes, sir.

9 Q. Why is doctor shopping a red flag?

10 A. It's a red flag because it disguises or tries to hide the  
11 behavior of the patient. It means the patient then is going to  
12 a number of different doctors, getting the same prescriptions  
13 or pain medications or other medications that they're abusing  
14 they've already filled, so that one doctor doesn't realize how  
15 many prescriptions or how many medications that patient is  
16 getting. And it's a common technique that's used when someone  
17 is diverting or abusing medications.

18 Q. Can prescriptions be tampered with?

19 A. Yes.

20 Q. How so?

21 A. There is very easy ways to tamper with them. You can  
22 change the quantity. If the doctor's written for 10, you can  
23 change it to 100 or the patient can. You can change the number  
24 of refills. You can change the dosage. There's various ways  
25 that I've seen in my experience that prescriptions have been

E9azcha2

Catizone - direct

1 altered.

2 Q. What is a pharmacist supposed to do if he or she observes  
3 indications of diversion?

4 A. They're immediately supposed to investigate that, by  
5 determining, contacting validating the prescriber, validating  
6 the prescription. And then if they can not verify or suspicion  
7 exists, they have a responsibility not to fill that  
8 prescription, and they must contact law enforcement.

9 Q. Now, what are some red flags that a pharmacy is engaged in  
10 diversion?

11 A. What may happen as the pharmacist fills a prescription,  
12 they may not notice some of these red flags until there is time  
13 to step back and review them. And in reviewing those  
14 prescriptions, the total of those some things would come to  
15 light. Has the number of controlled substances or oxycodone  
16 increased significantly? Has the number of oxycodone  
17 prescriptions that I buy or that I dispense far exceed what the  
18 totals are for pharmacies in my area or comparable pharmacies?  
19 And is there a change in the way people are paying for their  
20 medications? Are they paying more using cash instead of  
21 insurance? These would all be red flags that would indicate  
22 something was going on with the pharmacy or red flags for the  
23 pharmacy.

24 Q. What percentage of prescriptions are typically paid for  
25 with insurance as opposed to cash?

E9azcha2

Catizone - direct

1 A. It averages about 95 percent of prescriptions are paid for  
2 by insurance.

3 Q. And why would it would be a red flag diversion for a  
4 pharmacy to be taking more cash as opposed to insurance?

5 A. Based upon my experience, the reason the prescriptions are  
6 paid for in cash is because if they're submitted to the  
7 insurance company to be paid, the insurance company conducts  
8 another review of those prescriptions, and they may contact the  
9 prescriber.

10 They'll also have experts look at the prescription to  
11 verify the treatment, the length of therapy and the quantity.

12 What else happens with many insurance programs is the  
13 quantity and medications are restricted, so that a patient will  
14 only be able to get a certain amount of medications and even  
15 only get certain medications or dosages that the insurance will  
16 pay for and cover.

17 Q. Is there anything about the prices of medication that might  
18 be a red flag of diversion?

19 A. Since 95 or so percent of prescriptions are covered by  
20 insurance, there should be a minimum cost to patient of their  
21 out-of-pocket expenses.

22 When you see prescriptions and people paying cash for  
23 those prescriptions, and prescriptions -- they're being charged  
24 significantly more than what those products cost, or what other  
25 pharmacies would charge, that would be a red flag. Because you

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1 have to ask yourself the question, why would somebody not  
2 submit their prescriptions for payment. And if they didn't  
3 want to submit those for payment, perhaps they didn't want the  
4 employer to know what medications they were taking. Why would  
5 they pay three or five or 10 times the amount if they could pay  
6 another pharmacy that may be a block away or two blocks away,  
7 there's something there that's a red flag the pharmacist should  
8 look at.

9 Q. Now, Mr. Catizone, you mentioned, I think in passing, that  
10 you had reviewed some prescriptions in this case?

11 A. Yes, sir.

12 Q. Have you reviewed any other information provided to you by  
13 the government?

14 A. I reviewed some graphs and some charts and information  
15 concerning how much oxycodone was purchased by the pharmacy, as  
16 well as some comparative numbers about those purchases compared  
17 to other pharmacies, as well as the percentage of prescriptions  
18 that were paid for using cash or insurance coverage.

19 Q. And you also reviewed prescriptions?

20 A. Yes.

21 Q. Now, based on your review of the schedule two prescriptions  
22 from Stanley Pharmacy that you reviewed, have you developed any  
23 opinions about the validity of any of those prescriptions?

24 A. Yes, sir.

25 Q. And what is your opinion?

E9azcha2

Catizone - direct

1 A. In my opinion, a significant number of those prescriptions  
2 were fraudulent and invalid.

3 Q. And what is that based on?

4 A. It's based upon a number of factors.

5 First of all, the appearance of the actual  
6 prescription. As I mentioned earlier, every prescription in  
7 New York has to be on a specially designated form.

8 When I looked at the prescriptions from the pharmacy,  
9 a significant number of those prescriptions were discolored.  
10 There was something different about the color of those  
11 prescriptions that was immediately noticeable from what the  
12 prescription blank form must be in the State of New York.

13 Second, there was something wrong and different with  
14 the texture of the paper. It didn't have the same consistency.  
15 And it appeared to be in different parts of some of those  
16 prescriptions, something that was removed or something else  
17 done to alter the prescription. And the way I was able to see  
18 that is that the writing on the prescription at times bled  
19 through the paper. And it wasn't a bleeding from somebody  
20 spilling a liquid on there, because it was no residue from any  
21 liquid around there. It was a bleeding as if there was  
22 something different in the texture of that paper. And it did  
23 not look like a manufacture issue or problem with the paper,  
24 because it appeared in different places on different  
25 prescriptions.

E9azcha2

Catizone - direct

1                   And what was most noticeable on some of the  
2 prescriptions, the bleeding could be seen all the way through  
3 to the back of the paper. And that would not happen and should  
4 not happen on the prescription blanks that are issued by the  
5 state and should be used by the pharmacist.

6 Q. Did you make any observations about the dosages and  
7 quantities on the prescriptions you reviewed?

8 A. Yes. Again, as I mentioned earlier, the pharmacist has a  
9 responsibility to make sure that the prescriber's legitimate  
10 and prescription is legitimate. So they have to become  
11 familiar with the doctor.

12                   And they also have to become familiar with the types  
13 of patients the doctor sees, and the types of prescriptions  
14 that the doctor writes and the doctor's signature.

15                   What I noticed with these prescriptions is that the  
16 handwriting varied. There were different colors of ink, there  
17 were different directions. And there were other different  
18 differences in these prescriptions that were different from  
19 what I normally see.

20                   And what was also remarkable is that every patient  
21 that I looked at received the same medication, the same dose  
22 and the same quantity of prescriptions.

23                   The other factor that indicates to me there was some  
24 fraudulent behavior here is that usually there's a consistency  
25 between the prescriber and how they write, what they write, and

E9azcha2

Catizone - direct

1 how they sign their names. The consistency that I noticed was  
2 not within a prescriber where it had the same writing and the  
3 same signature. It was across multiple prescribers. So it  
4 looked as if a person or persons wrote the same directions in  
5 the same medications and used different doctors' names and  
6 different patients' names.

7 MR. RIOPELLE: Objection, your Honor.

8 THE COURT: Overruled.

9 A. Rather than a physician writing consistently with their  
10 group of patients.

11 What further substantiated that for me is that the  
12 signatures of the doctors varied significantly. And it wasn't  
13 just a doctor's poor handwriting as people say. Some of the  
14 signatures actually looked like drawings, a drawing of a sunset  
15 or squiggly lines, that had no resemblance to any of the other  
16 signatures for that physician.

17 MR. RIOPELLE: Again, objection, your Honor.

18 THE COURT: Again, overruled.

19 (Continued on next page)

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E9ATCHA3

Catizone - direct

1 BY MR. TEHRANI:

2 Q. Was there a particular dosage that you frequently saw among  
3 prescriptions?

4 A. I frequently saw the 30 milligrams of oxycodone.

5 Q. And again, what is your understanding of the 30-milligram  
6 oxycodone dosage?

7 A. Again, from two perspectives, it's one of the most abused  
8 medications in the United States, as well as its clinical  
9 significance or what it is prescribed or used for is very  
10 limited and has to be very strictly managed.

11 Q. Did you make any observations, based just on the  
12 prescriptions you reviewed, about the form of payment for those  
13 prescription?

14 A. Yes.

15 Q. What were those observations?

16 A. The prescriptions that I looked at from 2011 was in line  
17 with what was used in traditional pharmacies, and the majority  
18 of prescriptions were paid for through insurance coverage.  
19 When you looked at the back of the prescription, the amount  
20 that the patient paid was either zero or one dollar, whatever  
21 the co-pay was.

22 As I went through the prescriptions and saw an  
23 increase in the oxycodone prescriptions, what the patient paid  
24 and the percentage of what the insurance covered changed  
25 dramatically. The majority of prescriptions I reviewed were

E9ATCHA3

Catizone - direct

1 cash, and the price for those prescriptions averaged a thousand  
2 dollars.

3 Q. Mr. Catizone, do you have an opinion about whether a  
4 pharmacist operating in usual course of professional practice  
5 should have identified those prescriptions as invalid?

6 A. Yes.

7 Q. Why?

8 A. The information was there for the pharmacist, and the  
9 pharmacist has been educated and trained to identify those red  
10 flags and to act on those red flags. The immediate signs that  
11 the prescriptions had been altered, tampered or stolen through  
12 the discoloration of the paper, the markings, the inappropriate  
13 directions, the physician signatures. Then there was the  
14 abnormalities or the wrong things that occurred with how those  
15 prescriptions were written in terms of the medication, the  
16 quantity, and then there was again the abnormality that every  
17 patient received the same medication, the same dose and the  
18 same quantity.

19 Q. Just to clarify, not every prescription was the same dose,  
20 was it?

21 A. Correct, within certain prescriptions the same patients  
22 received the same dose, but every prescription wasn't for the  
23 same dose.

24 Q. Now when you reviewed the prescriptions in this case, they  
25 had been organized by doctor?

E9ATCHA3

Catizone - direct

1 A. Yes, sir.

2 Q. So you reviewed a stack of prescriptions for a particular  
3 doctor?

4 A. Yes, sir.

5 Q. And that's not how prescriptions would typically be  
6 reviewed as they come in by a pharmacist working in a pharmacy?

7 A. Correct.

8 Q. Do you believe that that would affect your opinion to  
9 whether the prescriptions should have been identified by a  
10 pharmacist as invalid?

11 A. No, sir.

12 Q. Why not?

13 A. What happens in traditional practice is when a first  
14 prescription or second prescription comes in you may not be  
15 able to identify some of those red flags, but soon there's a  
16 pattern that the pharmacist becomes aware of or should become  
17 aware of, and that pattern then was identified as something  
18 that came about upon review and something that a pharmacist  
19 should know.

20 Q. In your experience as a practicing pharmacist and as  
21 executive director of the NABP, have you previously reviewed  
22 prescriptions that you believe were tampered with?

23 A. Yes, sir.

24 Q. How did the prescriptions you reviewed in this case compare  
25 with those other prescriptions?

E9ATCHA3

Catizone - direct

1 A. Of all the prescriptions I looked at, those were the worst  
2 I have ever seen.

3 MR. TEHRANI: Your Honor, may I approach?

4 THE COURT: Yes, you may.

5 Q. Taking a look at Government Exhibits 1002 and 1003, were  
6 those some of the materials that you were asked to review in  
7 this case?

8 A. Yes, sir.

9 MR. TEHRANI: Your Honor, the government offers  
10 Government Exhibits 1002 and 1003 subject to connection.

11 MR. AGNIFILO: We have no objection. We would allow  
12 them in subject to the connection with the witness that  
13 actually made them.

14 THE COURT: Do you agree, Mr. Riopelle?

15 MR. RIOPELLE: Yes, Judge.

16 THE COURT: 1002 and 1003 are received in evidence.

17 (Government's Exhibits 1002 and 1003 received in  
18 evidence)

19 MR. TEHRANI: May we publish them to the jury?

20 THE COURT: Yes, you may.

21 BY MR. TEHRANI:

22 Q. And just briefly describe what Government  
23 Exhibits Exhibit 1002 shows, just briefly describe in general  
24 terms what it shows.

25 A. Shows the actual purchases at the pharmacy of oxycodone.

E9ATCHA3

Catizone - direct

1 Q. And compare that to other.

2 A. The first chart shows what the purchases were for that  
3 individual pharmacy and how those purchases increased  
4 significantly, so that the 413,000 purchases and dosage units  
5 far exceeded any of the other totals and rose steadily  
6 throughout that time.

7 The second chart shows how the purchases by that  
8 pharmacy compared to other pharmacies in the same area and how  
9 significant the purchases for this pharmacy exceeded any of the  
10 other pharmacies in that entire zip code.

11 Q. You may be looking at them in reverse order than the  
12 screen. To clarify, the graph with the red bar, that shows the  
13 comparison of ordering oxycodone to other pharmacies?

14 A. Yes, sir.

15 Q. And the other graph shows the ordering of oxycodone by  
16 Stanley Pharmacy over time?

17 A. Yes, sir.

18 Q. Did you develop my opinions based on your review of this  
19 information?

20 A. These graphs provided information indicating there was some  
21 fraud or diversion occurring within this pharmacy because of  
22 the significance, the quantity of the purchases, and how those  
23 purchases increased over time, and how those purchases were so  
24 much different and so much greater than any other pharmacy in  
25 that zip code.

E9ATCHA3

Catizone - direct

1 Q. What are the possible explanations for that kind of pattern  
2 of activity?

3 A. There would be two explanations, one, that the pharmacy now  
4 was a pain management pharmacy or affiliated with a pain  
5 management facility. I did not see anything in any of  
6 materials I reviewed anything to indicate that. The only other  
7 explanation is that there was diversion occurring in this  
8 pharmacy.

9 Q. Now if you take a look at Government Exhibit 1005, is that  
10 also one of the charts that you looked at in connection with  
11 your testimony?

12 A. Yes, sir.

13 MR. TEHRANI: Your Honor, the government offers  
14 Government Exhibits 1005 subject to connection.

15 MR. RIOPELLE: No objection.

16 MR. AGNIFILO: No objection.

17 THE COURT: 1005 is received in evidence.

18 (Government's Exhibit 1005 received in evidence)

19 MR. TEHRANI: May we publish to the jury?

20 THE COURT: Yes.

21 BY MR. TEHRANI:

22 Q. For now looking at the chart that is on the left, what does  
23 that chart generally show?

24 A. The chart confirmed information that I mentioned earlier  
25 that in 2011 the prescriptions paid for by insurance or cash

E9ATCHA3

Catizone - direct

1 represented what you would see in a traditional pharmacy or  
2 brick and mortar, the percentage of being paid for insurance  
3 being significantly higher than those paid for cash.

4 When you get to the later years of 2012, you can see  
5 how that changes significantly in the percentage of  
6 prescriptions paid in cash for oxycodone far exceed what  
7 happens in other brick and mortar pharmacies and becomes a red  
8 flag that there's activity occurring here that probably  
9 involves diversion.

10 MR. TEHRANI: Your Honor, one moment.

11 THE COURT: Yes.

12 (Pause)

13 MR. TEHRANI: No further questions, your Honor.

14 THE COURT: Any questions?

15 MR. AGNIFILO: Yes, your Honor.

16 CROSS-EXAMINATION

17 BY MR. AGNIFILO:

18 Q. Good morning, verging on afternoon. How are you?

19 A. Fine, thank you.

20 Q. Mr. Catizone, my name is Marc Agnifilo. I represent  
21 Christina Chai. We never met before, correct?

22 A. Yes, sir.

23 Q. I'm going to ask you a couple of questions. If my question  
24 to you is unclear, ask me to rephrase it and I'm happy to do  
25 that.

E9ATCHA3

Catizone - cross

1 A. Thank you.

2 Q. I want to start with what you were saying about the  
3 specific nature of New York State written prescriptions. You  
4 said that New York State has something unique to New York State  
5 that's different from every other state in the country. Just  
6 tell the jury exactly what that is.

7 A. Sure. Every prescription written in New York State has to  
8 be on a state-approved or state-issued prescription form.

9 Q. I'm not trying to test your memory. Did that start in  
10 about 2006?

11 A. Yes.

12 Q. And before 2006, how did New York State prescription -- how  
13 did New York State handle their prescriptions?

14 A. For schedule two prescriptions there was a specific form,  
15 and for other controlled substances or non-controlled  
16 substances prescription pads could vary based upon the  
17 prescriber and based upon what their practice is.

18 Q. So now that the procedure now in New York State is not just  
19 schedule two prescriptions but all schedules, indeed all  
20 prescriptions are handled in this same way?

21 A. Yes.

22 Q. And who issues the prescription pads?

23 A. There are vendors that are approved by the state that  
24 prescribers contact and purchase those prescriptions from.

25 Q. And the prescription pads are given to only certain doctors

E9ATCHA3

Catizone - cross

1 or medical professionals that are allowed to have these pads,  
2 correct?

3 A. Yes, sir, there's a secure procedure for securing and  
4 accounting for those prescriptions.

5 Q. And in your of experience and training, is it true that  
6 doctors are supposed to safeguard these prescription pads?

7 A. Yes, sir.

8 Q. And is it your experience and training that if a doctor  
9 knows that he or she lost one of these pads, that doctor should  
10 report that back to the proper authority?

11 MR. TEHRANI: Objection, your Honor.

12 THE COURT: Overruled.

13 A. Yes, sir.

14 Q. And is that -- I listened to your direct testimony very  
15 carefully, but here's my question, New York State handles it's  
16 prescriptions the way it does because the prescription itself  
17 is very important, is that fair to say?

18 A. Yes, sir.

19 Q. And it's the first step in the right medicine being given  
20 to the right patient in the right dosage, is that a fair  
21 statement?

22 A. Yes, sir.

23 Q. And the first person who makes the decision as to what  
24 medicine and what dosage should be given to what patient is the  
25 doctor, the medical professional, correct?

E9ATCHA3

Catizone - cross

1 A. Yes, sir.

2 Q. And the doctor or medical professional writes a  
3 prescription down on the New York State prescription pad and  
4 gives it to the patient, and in a brick and mortar pharmacy  
5 situation, the patient would bring that written prescription to  
6 the pharmacy, correct?

7 A. Yes, sir.

8 Q. Now you went through a number of different guidelines as to  
9 what the actual pharmacist and the pharmacy is supposed to do  
10 when they get a certain prescription, correct?

11 A. Yes, sir.

12 Q. And here's my question, I'm going to go through the them  
13 one by one, what I want to know is what stems from an actual  
14 regulation and what stems from what your version of best  
15 practice is, if I could make that distinction.

16 A. Yes, sir.

17 Q. Are you familiar with 21 CFR 1306?

18 A. Yes, sir.

19 Q. I'll lead you through it. If I say something that's wrong  
20 you'll correct me. 21 CFR 1306 is a federally-based rule,  
21 correct?

22 A. Yes, sir.

23 Q. And it governs --

24 THE COURT: For the jury's information, CFR stands for  
25 Code of Federal Regulations.

E9ATCHA3

Catizone - cross

1 MR. AGNIFILO: Thank you, Judge.

2 Q. And this particular Code of Federal Regulations has to do  
3 with prescriptions, right?

4 A. With controlled substances, sir.

5 Q. Okay. Prescriptions for controlled substances?

6 A. Yes.

7 Q. Any of the five schedules, correct?

8 A. Yes, sir.

9 Q. And so tell me if these are the different requirements that  
10 are actually part of this regulation, first, that the  
11 prescription be dated on the actual day that it was issued?

12 A. Yes.

13 Q. That it be signed by the medical professional on the day  
14 that it was issued?

15 A. Yes.

16 Q. That the full name and address of the patient be on the  
17 prescription?

18 A. Yes.

19 Q. That the drug name be on the prescription?

20 A. Yes.

21 Q. That the strength of the drug be on the prescription?

22 A. Yes, sir.

23 Q. That the dosage be on the prescription?

24 A. Yes, sir.

25 Q. That the quantity prescribed by on the prescription?

E9ATCHA3

Catizone - cross

1 A. Yes, sir.

2 Q. Directions for use be on the prescription?

3 A. Yes, sir.

4 Q. The name of the doctor?

5 A. Yes, sir.

6 Q. The address of the doctor?

7 A. Yes, sir.

8 Q. And the DEA registration number of the doctor?

9 A. Yes, sir.

10 Q. And I'm not trying to trick you, so if you want to look at  
11 it, feel free.

12 A. The only information you didn't ask is refills have to also  
13 be on there, the number of refills.

14 Q. Correct me -- tell me if this is right, for schedule two  
15 drugs, you can't get refills?

16 A. Correct, sir.

17 Q. So when we talk about refills, we're only talking about  
18 three, four and five?

19 A. Yes, sir.

20 Q. And not that this is part of the case, but just to be  
21 clear, schedule ones are illegal per se, so we're not -- a  
22 doctor can't prescribe heroin for someone, for instance?

23 A. Correct.

24 Q. So to your knowledge -- and I can pull it up for if you  
25 want to see it -- are there any other requirements that are

E9ATCHA3

Catizone - cross

1 actually in the text of 21 CFR 1306.05 other than the ones that  
2 I just laid out for you?

3 A. I believe there's a requirement that the pharmacist has to  
4 initial or somehow designate in a prescription record that they  
5 dispensed that prescription, I'm not sure if that's in the CFR  
6 or if that's a state requirement.

7 Q. I'm trying to do this in the form of a question. If you  
8 want to look at the CFR I can show it to you. Trust me I  
9 didn't --

10 THE COURT: What's your question?

11 MR. AGNIFILO: I'm trying to ask it in a legal way.

12 Q. We'll move on. It's either in the CFR or in another place?

13 A. Correct.

14 Q. One other thing then we'll move off this topic. Title 21,  
15 United States Code, Section 829 relates to which prescriptions  
16 must be in writing and which can be oral, is that fair to say?

17 A. Yes, sir.

18 Q. Which ones have to be in writing?

19 A. The schedule twos.

20 Q. And the other schedules can be oral, correct?

21 A. Yes, even the schedule twos can be oral, but the physician  
22 or prescriber has to follow up within a certain time period  
23 with the actual written prescription.

24 Q. Tell me how that works when an oral prescription is given  
25 for a schedule two drug with the follow up with the written

E9ATCHA3

Catizone - cross

1 prescription.

2 A. Let's say you have an emergency situation and the doctor  
3 can't get to write the prescription, they can phone the  
4 prescription to the pharmacy, the pharmacy can fill it, but  
5 within 72 hours that prescriber, that doctor had to make sure  
6 that the pharmacist has in their hand the written prescription  
7 for that patient.

8 Q. You mentioned a number of state regulations in addition to  
9 the federal regulations we covered, correct?

10 A. Yes, sir.

11 Q. Is there any state regulation that explicitly says that a  
12 pharmacist has to do some type of face-to-face meeting with the  
13 patient?

14 A. There are DEA guidance documents that indicate for a  
15 prescription to be valid that a pharmacist must conduct a  
16 face-to-face evaluation.

17 Q. Let me ask the question so I don't want to be confusing.  
18 I'm talking about New York State regulations, is there any New  
19 York State regulation that requires that a pharmacist have a  
20 meeting or have a conversation with the patient?

21 A. Yes.

22 Q. And where is that?

23 A. In 2004 the State of New York passed a requirement that for  
24 all new prescriptions the pharmacist must counsel that patient  
25 and must talk to the patient about what the medication is, what

E9ATCHA3

Catizone - cross

1 it's used for, what the side effects are, how the medication is  
2 stored, and what happens with the medication if a dosage is  
3 missing.

4 Q. Does the pharmacist him or herself have to do that?

5 A. Yes, the pharmacists themselves.

6 Q. You said the owner of a pharmacy has the same  
7 responsibility as the pharmacist, correct?

8 A. In terms of the oversight and compliance with the laws,  
9 yes, sir.

10 Q. So the pharmacist is -- the actual pharmacist on duty  
11 doesn't have a greater degree of responsibility than does the  
12 owner of the pharmacy, correct?

13 A. Yes, sir.

14 Q. Would it be fair to say in your experience that a pharmacy  
15 in a busy, densely populated residential area could be involved  
16 in between 2 and 300 prescriptions per day?

17 A. Yes, sir.

18 Q. And do you know -- and if it wasn't part of your review  
19 today then say it wasn't part of your review today. Did you  
20 look at the number of controlled substance prescriptions that  
21 were issued by the Stanley Pharmacy day to day or week to week  
22 as part of your testimony today?

23 A. No, sir.

24 THE COURT: You say issued?

25 MR. AGNIFILO: Yeah, prescriptions that were filled,

E9ATCHA3

Catizone - cross

1 rather --

2 Q. I used the wrong term, prescriptions filled by the Stanley  
3 Pharmacy day to day, week to week, month to month.

4 A. No, sir.

5 Q. And I think you said on direct examination that when you  
6 were given the written prescriptions you were given them broken  
7 down doctor by doctor, correct?

8 A. Yes, sir.

9 Q. And I think that your testimony was that that is not the  
10 way the pharmacist is going to get the prescriptions in  
11 real-time, correct?

12 A. Yes, sir.

13 Q. And it's fair to say that in a pharmacy that might be  
14 getting 2 or 300 prescriptions a day, that in all likelihood  
15 there's going to be a different variety of doctors writing  
16 those prescriptions, correct?

17 A. Yes, sir.

18 Q. And as part of your testimony today, did you review how  
19 many doctors had written prescriptions that were filled at the  
20 Stanley Pharmacy in total?

21 A. Not the exact number, but I did look at whatever doctors  
22 that were separated for those prescriptions.

23 Q. And do you remember approximately -- I'm not trying to hold  
24 you to a number -- how many doctors you reviewed their  
25 prescriptions?

E9ATCHA3

Catizone - cross

1 A. Approximately somewhere between 20 and 30.

2 Q. Do you have any reason believe that over the course of two  
3 years over a thousand doctors had written prescriptions that  
4 were filled at Stanley Pharmacy?

5 A. That would be outside of my experience that any pharmacy  
6 had a thousand doctors.

7 Q. Now when was the last time you were -- I understand you're  
8 a pharmacist, correct?

9 A. Yes, sir.

10 Q. When was the last time you were a practicing pharmacist?

11 By that I mean someone who actually filled a prescription and  
12 handed a bottle to another person.

13 A. That was probably about 15 years ago when I worked in a  
14 community pharmacy where we filled 500 prescriptions a day.

15 Q. Where was that, sir?

16 A. That was on the south side of Chicago.

17 Q. And how many pharmacists worked at your particular  
18 pharmacy?

19 A. There were two of us.

20 Q. And so you and another pharmacist would fill 500  
21 prescriptions a day?

22 A. Yes, sir.

23 Q. And it's 15 years ago, so you might not remember, do you  
24 remember how long you would spend on each prescription?

25 A. It would vary depending upon the prescriptions, so on

E9ATCHA3

Catizone - cross

1 average if it was a refill, probably a few minutes; if it was a  
2 new prescription, much longer than just a few minutes; if it  
3 was a questionable prescription, it could take hours before we  
4 would validate those prescriptions.

5 Q. Now you're not a licensed pharmacist in the State of New  
6 York, correct?

7 A. No, sir.

8 Q. And you are not a medical doctor?

9 A. Correct.

10 Q. And you're not an attorney?

11 A. Sorry?

12 Q. You're not an attorney?

13 A. No, sir.

14 Q. That was a wise move.

15 MR. AGNIFILO: Couple of other questions, Judge.

16 Q. Did you have any -- as part of your testimony here today,  
17 did you review the percentage of controlled substance  
18 prescriptions in Stanley Pharmacy in the context of all the  
19 prescriptions filled in a given day or week?

20 A. No, sir.

21 Q. And in your experience, is it fair to say that on average  
22 about 11 percent or so of the prescriptions filled by a  
23 legitimate brick and mortar pharmacy would be controlled  
24 substance prescriptions?

25 A. Yes, sir.

E9ATCHA3

Catizone - cross

1 Q. So I'm trying to figure out from you where would the red  
2 flag be in terms of the percentage.

3 Let me ask the question, so 11 percent would not be a  
4 red flag because that's average?

5 A. Not by itself, sir, no.

6 Q. If you saw 15 percent, would you say that's a red flag?

7 A. Yes.

8 Q. So somewhere between 11 percent and 15 percent is where you  
9 say the red flag would be in terms of percentage of controlled  
10 substance prescriptions?

11 A. No, I said once the percentage exceeds 11 percent it  
12 becomes more than a red flag, but you look at it in the context  
13 of other red flags, sir.

14 Q. Understood. You don't know who at the Stanley Pharmacy was  
15 having the face-to-face contact with customers, correct?

16 A. Not specifically, sir.

17 Q. And you don't know -- I ask because you said that some of  
18 the red flags that you would cite as some someone knowledgeable  
19 in the pharmaceutical industry is how the person acted when  
20 they came in, correct?

21 A. Yes, sir.

22 Q. If they used street talk, right?

23 A. Yes, sir.

24 Q. If they looked like more of a drug dealer than a person in  
25 need of legitimate medication. That wasn't your term.

E9ATCHA3

Catizone - cross

1 A. No, in terms of their behavior, how they were acting.

2 Q. Now you said that the most abused drug in the country is  
3 the 30-milligram variety of oxycodone?

4 A. I said the two most were hydrocodone the oxycodone. The  
5 30-milligram was the most abused of the oxycodone.

6 Q. And in the Northeast, that seems to be the drug that's most  
7 abused?

8 A. Oxycodone, yes, sir.

9 Q. What are the companies that make oxycodone?

10 A. I'm not sure of all the companies, but the primary  
11 manufacturer of the brand name is Purdue Pharma. Then there's  
12 a generic company by the name of Watson, and I believe one  
13 other generic company and I'm not sure of that company.

14 Q. And is Purdue still producing the 30-milligram variety of  
15 oxycodone?

16 A. As far as I know, yes.

17 Q. Fair to say that oxycodone was on the rise in this country  
18 between 2009 and 2012?

19 A. Yes, sir.

20 Q. And describe what that rise is like in terms of however you  
21 want to describe it in terms of percentages or volume or  
22 however you have experienced it in your expertise.

23 A. The best way to describe it, there was a theory in pain  
24 management that the patient should receive as much pain  
25 medication as they wanted or needed with no restriction on what

E9ATCHA3

Catizone - cross

1 the quantities would be, and there shouldn't be punitive  
2 measures against pharmacies that were dispensing large  
3 quantities, and oxycodone started rising from the top 200 drugs  
4 to the very top of the drugs that are dispensed and prescribed.

5 Q. You talking about nationwide, right?

6 A. Yes, sir.

7 Q. Do you know what year it became the number one drug  
8 prescribed?

9 A. I don't.

10 Q. But fair to say between 2009 and 2012 there was a drastic  
11 rise in oxycodone, correct?

12 A. Correct, sir.

13 Q. That's not unique to Stanley Pharmacy?

14 A. Correct.

15 MR. AGNIFILO: I have no other questions of this  
16 witness. Thank you, sir.

17 THE COURT: Mr. Riopelle.

18 MR. RIOPELLE: Yes, your Honor, thank you.

19 CROSS-EXAMINATION

20 BY MR. RIOPELLE:

21 Q. Good afternoon, Mr. Catizone.

22 A. Good afternoon, sir.

23 Q. I think you testified, if I heard you correctly, that you  
24 have testified in approximately ten criminal cases on previous  
25 occasions, right?

E9ATCHA3

Catizone - cross

1 A. Yes, sir.

2 Q. Am I right that in each case you have had your travel  
3 expensed covered by the government, is that right?

4 A. Yes, sir.

5 Q. And you've testified in Cleveland, Ohio, for example?

6 A. Yes, sir.

7 Q. And gone as far west as San Francisco?

8 A. Yes, sir.

9 Q. As far north as Boston to testify, correct?

10 A. Yes, sir.

11 Q. And you've testified in Brooklyn across the river here  
12 twice previously in criminal cases, am I right?

13 A. Yes, sir.

14 Q. And am I right that in each of those ten cases you were  
15 called by the government, the Department of Justice?

16 A. Yes, sir.

17 Q. And you've never testified for a defendant in a criminal  
18 case, is that right?

19 A. Correct.

20 Q. Now during your direct examination you expressed some  
21 opinions about the handwriting that you saw on some of the  
22 prescriptions that you reviewed. Do you recall that?

23 A. Yes, sir.

24 Q. And I think we had it that the prescriptions were organized  
25 when you examined them by doctor by doctor, correct?

E9ATCHA3

Catizone - cross

1 A. Yes, sir.

2 Q. So when you noticed differences in the handwriting of the  
3 prescriptions that you looked at for -- I'm going to use a  
4 generic name, for a Dr. Smith, say -- say you looked at 20  
5 prescriptions for Dr. Smith and saw a differences in than  
6 handwriting, you were looking at a series of prescriptions that  
7 purported to be issued by Dr. Smith, correct?

8 A. Yes, sir.

9 Q. And I think we had it previously as well that that is not  
10 the way prescriptions typically come into a pharmacy though,  
11 right?

12 A. Yes, sir.

13 Q. Dr. Smith's prescriptions don't come in all at one time,  
14 correct?

15 A. Yes, sir.

16 Q. And it's true, is it not, that you have no formal training  
17 by the way, as a handwriting expert, is that right?

18 A. Correct.

19 Q. Now I think you told us that the pharmacy you worked in on  
20 the south side of Chicago issued as many as 500 prescriptions  
21 in a day, is that right?

22 A. Yes, sir.

23 Q. And that is not necessarily unusual for a busy urban  
24 pharmacy, is that right?

25 A. Correct.

E9ATCHA3

Catizone - cross

1 Q. And I know you're from Chicago, you may not know Yonkers  
2 that well. Have you been to Yonkers?

3 A. No, sir.

4 Q. So you're not able to tell us whether the Stanley Pharmacy  
5 is located in a busy urban location, is that correct?

6 A. Correct, sir.

7 Q. Now schedule two substances, as we have it, are those that  
8 relate to pain medication, correct?

9 A. Some of them. There are other indications as well, sir.

10 Q. And oxycodone, which is what this case is about, is a pain  
11 medication, correct?

12 A. Yes, sir.

13 Q. And one thing that might affect the degree or the number of  
14 prescriptions handled by a pharmacy for oxycodone would be its  
15 proximity to doctors who would issue such prescriptions, is  
16 that right?

17 A. Yes, sir.

18 Q. So for example, a pharmacy located near one or more  
19 hospitals where surgery is performed might typically handle  
20 more prescriptions for oxycodone than a pharmacy located in a  
21 rural area, is that fair to say?

22 A. Yes, sir.

23 Q. And if a pharmacy is located near a surgical practice that  
24 does outpatient surgery, that practice might issue oxycodone as  
25 well, correct?

E9ATCHA3

Catizone - cross

1 A. Yes, sir.

2 Q. Now are you aware or have you done any research to  
3 determine how many hospitals were located near the Stanley  
4 Pharmacy?

5 A. No, sir.

6 Q. So I take it you have no awareness that there is a hospital  
7 called St. John's Riverside Hospital, which is just a short  
8 distance from the Stanley Pharmacy, is that right?

9 A. Correct.

10 Q. And you do not know that there is a hospital in the  
11 St. Joseph's Medical Center located in the same zip code as the  
12 Stanley Pharmacy?

13 A. Correct.

14 Q. And you have no awareness there is a medical practice  
15 called the Westchester Surgical Specialists located near the  
16 Stanley Pharmacy?

17 A. Correct.

18 Q. Now am I right that it is not unusual for a patient to drop  
19 a prescription off at the pharmacy and come back and pick it up  
20 later?

21 A. You're correct.

22 Q. That happens all the time, correct?

23 A. Yes, sir.

24 Q. So on those occasions the same person would be seen in the  
25 pharmacy at least twice a day, correct, or twice on the day

E9ATCHA3

Catizone - cross

1 when he drops the prescription off and picks it up later,  
2 correct?

3 A. Could be, yes.

4 Q. And I think we heard you say that a family member or a  
5 caregiver may also drop off and pick up a prescription for a  
6 family member or the person being cared for, is that right?

7 A. Yes, sir.

8 Q. And that is not unusual in the practice of pharmacy, am I  
9 correct?

10 A. Yes, sir.

11 Q. Now we saw some charts while you were testifying that  
12 indicated that the number of prescriptions for oxycodone that  
13 were being paid for in cash increased dramatically in 2012, is  
14 that right?

15 A. Yes, sir.

16 Q. And what those charts also demonstrated is that before that  
17 time the number of oxycodone prescriptions being paid for in  
18 cash was a more normal number, correct?

19 A. Yes, sir.

20 Q. And we also saw from those charts, did we not, that the  
21 number of oxycodone prescriptions issued by the Stanley  
22 Pharmacy increased dramatically in 2012, correct?

23 A. I don't think the charts show that they were purchases.

24 Q. Am I correct that the charts show in the year 2012 the  
25 amount of oxycodone being dispensed by the Stanley Pharmacy

E9ATCHA3

Catizone - cross

1 increased dramatically?

2 A. Could I check the charts to make sure?

3 Q. Certainly.

4 A. I thought there were just purchases.

5 Q. Certainly.

6 A. The charts that I reviewed showed the amount of oxycodone  
7 ordered and purchased but not the number of prescriptions  
8 dispensed.

9 Q. Let's go with ordered. Is it fair to say the amount of  
10 oxycodone ordered by the pharmacy increased dramatically in  
11 2012?

12 A. Yes, sir.

13 Q. And is it also fair to say the charts show the amount of  
14 oxycodone dispensed by the pharmacy increased dramatically in  
15 2012?

16 A. That would be an assumption that you could make.

17 Q. Now am I -- do you recall whether the prescriptions  
18 themselves that you examined and that in your opinion looked  
19 strange to you or had red flags attached to them of various  
20 kinds, do you remember whether those prescriptions were dated  
21 in 2012?

22 A. They were dated from 2012 across the spectrum from 2011 to  
23 2013.

24 Q. And I would like to ask you about what the New York  
25 regulations provide with respect to the work that can be done

E9ATCHA3

Catizone - cross

1 in a pharmacy by pharmacy technicians or interns. Am I  
2 correct, sir, that pharmacy technicians don't have the same  
3 certification that a pharmacist does?

4 A. Yes, sir.

5 Q. But they are permitted, are they not, by New York State  
6 regulation, at least, to do some functions associated with the  
7 dispensation of drugs?

8 A. Yes, non-judgmental tasks.

9 Q. And is that also true of a pharmacy intern?

10 A. No, sir.

11 Q. What can a pharmacy intern do?

12 A. A pharmacy intern can engage in patient housing activities  
13 and other patient care activities again under the supervision  
14 of a pharmacist, because a pharmacy intern is someone that is  
15 enrolled in a pharmacy program, a college pharmacy, and working  
16 towards becoming licensed as a pharmacist.

17 Q. So they can do everything that an intern can do more,  
18 correct?

19 THE COURT: You asked him about an intern.

20 Q. You were focused right then on -- I'm sorry, I meant a  
21 technician. An intern can do what a technician can do and  
22 more, correct?

23 A. Yes.

24 Q. And among the things that a technician can do is to  
25 physically receive the written prescription from a patient, is

E9ATCHA3

Catizone - cross

1 that correct?

2 A. Yes, sir.

3 Q. And the technician can also type prescription labels, is  
4 that correct?

5 A. Yes, sir.

6 Q. And the technician can key the entries for the prescription  
7 into the pharmacy's computer system, is that right?

8 A. Yes, sir.

9 Q. And a technician is permitted by New York State regulation  
10 to retrieve drugs from the pharmacy stock and return them to  
11 the pharmacy stock, is that correct?

12 A. Yes, sir.

13 Q. And the technician is actually permitted to even count the  
14 dosage units of drugs under the supervision of a pharmacist, of  
15 course, correct?

16 A. Yes, sir.

17 Q. And the technician is permitted to place the dosage in a  
18 bottle, correct?

19 A. Yes, sir.

20 Q. And the technician is permitted by New York State  
21 regulation to put the prescription label on the bottle,  
22 correct?

23 A. Yes, sir.

24 Q. And a technician is also permitted then ultimately to  
25 deliver the filled prescription to the patient, correct?

E9ATCHA3

Catizone - cross

1 A. Under certain circumstances, yes.

2 Q. Now when you were working in that busy pharmacy on the  
3 south side of Chicago, am I correct that you had pharmacy  
4 technicians who worked with you?

5 A. Yes, sir.

6 Q. And is it correct to say that you came to rely on those  
7 pharmacy technicians?

8 A. Yes, sir.

9 Q. And you came to trust them over time as you continued to  
10 work with them, correct?

11 A. Yes, sir.

12 Q. And in your experience as an expert in pharmacies, that's  
13 not unusual, is it?

14 A. No, sir.

15 Q. Now am I correct that when a physician's prescription pad  
16 is stolen, that physician is required to report that theft, is  
17 that correct?

18 A. Yes.

19 Q. And am I correct that it is proper practice by a pharmacy  
20 which becomes aware of stolen prescriptions to alert other  
21 pharmacies in the neighborhood?

22 A. That's sometimes a common practice, yes, sir.

23 Q. And that's often done by email, is that right?

24 A. Email, phone, various means.

25 Q. In fact, you would expect a responsible pharmacist or a

E9ATCHA3

Catizone - cross

1 responsible owner of a pharmacy to alert pharmacists and  
2 pharmacist's technicians to the theft of prescription pads in  
3 the neighborhood if he was aware of it?

4 A. I think that's a fair statement, yes, sir.

5 Q. And that's the correct thing to do, correct?

6 A. Yes.

7 Q. Now sir, are you aware that my client owned the Stanley  
8 Pharmacy for more than 25 years by 2012?

9 A. No, sir.

10 Q. Are you aware that he owned the Stanley Pharmacy for some  
11 period significantly before 2011 and 2012?

12 A. No, sir.

13 Q. Are you aware or has the government made you aware that my  
14 client worked together with his son in the pharmacy?

15 A. No, sir.

16 MR. RIOPELLE: I have no further questions, your  
17 Honor.

18 THE COURT: Do you have anything, Mr. Tehrani?

19 MR. TEHRANI: Your Honor, just a few questions.

20 REDIRECT EXAMINATION

21 BY MR. TEHRANI:

22 Q. Mr. Catizone, you were asked some questions on  
23 cross-examination about testifying on behalf of the government.

24 A. Yes, sir.

25 Q. Have you ever testified on behalf of a pharmacist?

E9ATCHA3

Catizone - redirect

1 A. Yes, I have.

2 Q. In what capacity?

3 A. When the pharmacist was denied licensure in a particular  
4 state or the pharmacist was up for a disciplinary action that  
5 was not fair, I testified in those cases on behalf of  
6 pharmacist in those administrative hearings.

7 Q. You were also asked some questions about whether you might  
8 expect some higher levels of oxycodone being dispensed by a  
9 pharmacy near hospitals. Do you remember those questions?

10 A. Yes, sir.

11 Q. Would you expect a dramatic increase if a new hospital or  
12 surgical center didn't open?

13 A. No, sir. If the pharmacy is located by those hospitals,  
14 then the amount of oxycodone that's dispensed should remain  
15 fairly consistent. To see a significant increase without the  
16 opening of a new hospital or something else significant  
17 changing would not be explainable unless by some other reason.

18 Q. Would you expect one pharmacy in a particular area where  
19 there's a number of hospitals to have, say, doubled the amount  
20 of oxycodone that it dispensed than any other?

21 A. Again, if those pharmacies are located close to the  
22 hospitals in the same zip code, there should be a comparable  
23 rise in those prescriptions across time. One pharmacy  
24 shouldn't see a dramatic increase and the others not see an  
25 increase.

E9ATCHA3

Catizone - redirect

1 Q. If the explanation for the increase in oxycodone were the  
2 pharmacy's proximity to hospitals or surgical centers, would  
3 you expect there to be a higher level of other schedule two  
4 medications dispensed?

5 A. There should be a high level of other pain medications,  
6 because a hospital or clinic that is specialized or involved in  
7 this type of practice wouldn't write for one drug, so there  
8 should have been significant increases in other medications as  
9 well.

10 Q. You were also asked some questions about particular roles  
11 that a pharmacy technician is allowed to perform. Do you  
12 remember those questions?

13 A. Yes, sir.

14 Q. Is there a requirement that the pharmacy technician be  
15 supervised?

16 A. Yes, everything the technician does, either taking  
17 medications off the shelf and putting them in a bottle or  
18 entering a prescription, that all has to be approved by the  
19 pharmacist. So before the prescription is filled, a pharmacist  
20 has to sign off and check the prescription that was presented  
21 with the information that was entered into the computer.

22 Q. Does a pharmacist have to be present in order for a  
23 medication to be dispensed by a pharmacy?

24 A. Yes, sir.

25 Q. You were also asked some questions on cross-examination

E9ATCHA3

Catizone - redirect

1 about your experience as a pharmacist in Chicago.

2 A. Yes, sir.

3 Q. You were asked questions about whether you worked with a  
4 pharmacy tech and whether you ever came to rely on the pharmacy  
5 tech. Do you remember those questions?

6 A. Yes, sir.

7 Q. Did you ever let a pharmacy tech dispense medication  
8 without your supervision?

9 A. No, sir.

10 MR. TEHRANI: No further questions, your Honor.

11 THE COURT: Okay, you're excused. Thank you very  
12 much.

13 Next witness.

14 MR. TEHRANI: Your Honor, the government calls Edward  
15 Girdauskas.

16 EDWARD GIRDAUSKAS,

17 called as a witness by the Government,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. TEHRANI:

21 Q. Mr. Girdauskas, how old are you?

22 A. Forty-one.

23 Q. Where were you born?

24 A. Yonkers, New York.

25 Q. How far did you go in school?

E9ATCHA3

Girdauskas - direct

1 A. Post-graduate year.

2 Q. What jobs have you had since then?

3 A. City of Yonkers Sanitation and security.

4 Q. Where do you currently live?

5 A. In jail.

6 Q. How long have you been there?

7 A. Five months.

8 Q. Why?

9 A. My bail was revoked.

10 Q. Prior to that were you arrested?

11 A. Yes.

12 Q. Why were you arrested?

13 A. Oxycodone conspiracy.

14 Q. And where did you primarily get your oxycodone?

15 A. Stanley Pharmacy.

16 Q. And how did you get your from Stanley Pharmacy?

17 A. Forged prescription, stolen prescription.

18 Q. Sorry?

19 A. Stolen and forged prescriptions.

20 Q. Where is Stanley Pharmacy located?

21 A. Yonkers, New York.

22 Q. Now who in Stanley Pharmacy did you primarily interact  
23 with?

24 A. Ji.

25 Q. And who is Ji?

E9ATCHA3

Girdauskas - direct

1 A. Owner.

2 Q. And who else worked in the pharmacy?

3 A. Two counterwomen, mulatto guy, pharmacist.

4 Q. Did you ever see anyone else in the pharmacy, any other  
5 males other than Ji or the mulatto guy?

6 A. Older gentleman.

7 Q. Did you understand who the older gentleman was?

8 A. Ji's father.

9 Q. Could you describe the pharmacist?

10 A. Asian, she wore white lab coat.

11 Q. What did she do?

12 A. Put labels on bottles, filled bottles with pills.

13 Q. How do you know that?

14 A. I seen her.

15 Q. Sorry?

16 A. I saw her.

17 Q. What did you do with the oxycodone after you got the  
18 oxycodone from Stanley Pharmacy?

19 A. Used it and sold it.

20 Q. And you mentioned initially that the reason you're in jail  
21 is because your bail was revoked?

22 A. Yes.

23 Q. Why was your bail revoked?

24 A. Several dirty urines.

25 Q. What do you mean by that?

E9ATCHA3

Girdauskas - direct

1 A. I was under a random drug testing program and I failed a  
2 drug test for oxycodone.

3 Q. So you were continuing to use narcotics?

4 A. Yes.

5 Q. Now other than oxycodone, have you used any other drugs?

6 A. Yes.

7 Q. Which ones?

8 A. Oxycontin, I used Xanax, marijuana, Vicodin, Percocet.

9 Q. Any others. Ever used cocaine?

10 A. Cocaine.

11 Q. Heroin?

12 A. Heroin, yes.

13 Q. And other than oxycodone, have you sold any other kinds of  
14 drugs?

15 A. Yes.

16 Q. Which ones?

17 A. Marijuana, cocaine, heroin, Vicodin, Percocet, steroids,  
18 Xanax, Valium.

19 Q. And when generally did you sell those narcotics?

20 A. Date?

21 Q. Approximately, yeah?

22 A. About 2005 to the present.

23 Q. Now focusing on the pills that you sold, generally  
24 speaking, how did you get the pills that you obtained and sold?

25 A. Forging prescriptions, getting prescriptions from doctors,

E9ATCHA3

Girdauskas - direct

1 buying stolen prescriptions.

2 Q. And just to break that down, you got certain prescriptions  
3 from doctors for the pills that you wanted?

4 A. Yes.

5 Q. And then another category was stolen prescriptions?

6 A. Yes.

7 Q. And then a third category was forged prescriptions?

8 A. Yes.

9 Q. Can you -- we'll talk about this more in depth, but can you  
10 just sort of briefly explain how you forged prescriptions.

11 A. You wash them, you submerge them in brake fluid, it removes  
12 pen ink, you use a make-up wipe to remove the excess brake  
13 fluid, place it in rubbing alcohol to remove the rest of the  
14 brake fluid and dry it between paper towels.

15 Q. So just in summary, you would get prescriptions for some  
16 other thing?

17 A. Asthma inhaler or antibiotic, something like that, or  
18 referral to another doctor.

19 Q. And you would remove the ink?

20 A. Remove the ink and write it for oxycodone.

21 Q. And that's called washing or cleaning prescriptions?

22 A. Yes.

23 Q. And certain of the prescriptions that you used came from  
24 doctors after you went to visit the doctors?

25 A. Yes.

E9ATCHA3

Girdauskas - direct

1 Q. And those weren't visits for legitimate medical conditions?

2 A. No.

3 Q. And the prescriptions that you got from those doctors  
4 weren't for legitimate medical conditions?

5 A. No.

6 Q. How did you pay for those doctors' visits?

7 A. Through my insurance, and doctors ran tests that I didn't  
8 need, and another doctor I paid with pills.

9 Q. And did you also pay for any of the prescriptions with  
10 insurance?

11 A. Yes.

12 Q. Now you testified that you were arrested. What happened to  
13 those charges?

14 A. I pled guilty.

15 Q. And what charges did you plead guilty to?

16 A. Narcotics conspiracy, and medical -- Medicaid fraud.

17 Q. Did you plead guilty pursuant to a cooperation agreement?

18 A. Yes.

19 Q. Have you been sentenced yet?

20 A. No.

21 Q. As part of your cooperation, did you participate in  
22 meetings with the government before getting your cooperation  
23 agreement?

24 A. Yes.

25 Q. And as you sit here today, have you told the government

E9ATCHA3

Girdauskas - direct

1 everything about your criminal past?

2 A. Yes.

3 Q. Now what is the highest sentence that you could receive as  
4 you're sitting here today?

5 A. 110 years.

6 Q. Sitting here today, what is the lowest sentence you that  
7 you could possibly receive?

8 A. Five years.

9 Q. Was your cooperation agreement oral or was it written down?

10 A. Written.

11 Q. Now what is your understanding of what the government is  
12 obligated to do for you if you live up to your end of  
13 cooperation agreement?

14 A. 5K letter.

15 Q. Could you briefly explain what a 5K letter is?

16 A. It's given to the judge and helps me during sentencing.

17 Q. Who writes a 5K letter?

18 A. The government.

19 Q. And if the government writes a 5K letter, is the judge  
20 allowed to sentence you below the five year minimum that you  
21 were talking about?

22 A. Yes.

23 Q. And what does your 5K letter -- what would a 5K letter say?

24 A. That I lived up to my agreement.

25 Q. And would it also talk about the crimes that you committed?

E9ATCHA3

Girdauskas - direct

1 A. Yes, everything.

2 Q. And so if you get a 5K letter, what's the lowest sentence  
3 that you could receive?

4 A. Time served.

5 Q. And even if you get a 5K letter, what is your maximum  
6 sentence?

7 A. 110 years.

8 Q. Have any promises been made to you at all about the  
9 sentence you're going to receive?

10 A. No, sir.

11 Q. Who decides what your sentence is?

12 A. The judge.

13 Q. And does the government even recommend a particular  
14 sentence to the judge?

15 A. No, sir.

16 Q. Does the result of this case here affect whether you get a  
17 5K letter?

18 A. No, sir.

19 Q. What happens if you do not meet your obligations under the  
20 cooperation agreement?

21 A. Don't get the letter.

22 Q. Do you get to take your plea back?

23 A. No.

24 Q. Have you committed any crimes that you have not been  
25 charged for?

E9ATCHA3

Girdauskas - direct

1 A. Yes.

2 Q. And what are those?

3 A. I robbed Wal-Mart of doghouses and changed prices in the  
4 supermarket.

5 Q. How did you rob doghouses?

6 A. Walked out, didn't pay for them.

7 Q. What happened in the supermarket?

8 A. Changed price tags.

9 Q. So you would take a price tag off and put a lower price tag  
10 on?

11 A. Yes.

12 Q. Approximately how many times did you do that?

13 A. Couple hundred times.

14 Q. Now turning back to your involvement with the oxycodone  
15 distribution, when did you first start illegally obtaining  
16 oxycodone?

17 A. 2005.

18 Q. And did you eventually start using oxycodone as well?

19 A. Yes.

20 Q. When was that?

21 A. 2009.

22 Q. And why?

23 A. Injury.

24 Q. And at that point, or at some point after that, did your  
25 usage of oxycodone turn into an addiction?

E9ATCHA3

Girdauskas - direct

1 A. Yes.

2 Q. So for some period of time you're obtaining legitimate  
3 prescriptions for oxycodone because of your injury?

4 A. Yes.

5 Q. But at other times you were obtaining illegitimate  
6 prescriptions?

7 A. Yes.

8 Q. Who did you primarily obtain prescriptions from?

9 A. Doctors, doctors I went to.

10 Q. And at least initially were there a doctor or doctors that  
11 you went to more often than others?

12 A. Yes.

13 Q. Which doctors are those?

14 A. Dr. Wijetilaka and Dr. El-Masry.

15 Q. How many oxycodone prescriptions would you be able to get  
16 from each of those doctors per month?

17 A. One each from them plus others.

18 Q. So you were also getting prescriptions for other pills from  
19 those doctors?

20 A. Yes.

21 Q. What other pills?

22 A. Percocet, Vicodin, Xanax.

23 Q. And the prescriptions that you were getting from these two  
24 doctors then were written in your name?

25 A. Yes.

E9ATCHA3

Girdauskas - direct

1 Q. How did you pay to get those prescriptions?

2 A. I used my insurance, and I was -- they were running tests  
3 they weren't supposed to, and I paid in pills one of the  
4 doctors.

5 Q. Which doctor?

6 A. Dr. El-Masry.

7 Q. How would that work?

8 A. I would give him 20 pills off the top of every script that  
9 he wrote.

10 Q. He would write you a prescription for oxycodone, you would  
11 fill it, and you would give him 20 pills?

12 A. Yes, sir.

13 Q. Now did you also recruit others to get prescriptions?

14 A. Yes.

15 Q. From which doctors?

16 A. El-Masry and Wijetilaka.

17 Q. Whom did you recruit?

18 A. My brother, Mike Girdauskas, Dan DiMase, Ant Sales, Joe  
19 Fasce, and Doreen, Sales' wife.

20 Q. What's your brother's name?

21 A. Michael Girdauskas.

22 Q. Why did you recruit them to get prescriptions?

23 A. I needed the prescriptions. They would give me half their  
24 prescription.

25 Q. Approximately how many people did you recruit in total?

E9ATCHA3

Girdauskas - direct

1 A. Ten.

2 THE COURT: Mr. Tehrani, we're going to take our  
3 afternoon break and we'll resume at 2 o'clock.

4 MR. TEHRANI: Thank you, your Honor.

5 (Jury not present)

6 THE COURT: We'll resume at 2 o'clock. Let me make an  
7 observation. I found it very disconcerting that people are  
8 moving around while you're conducting an examination. It's  
9 confusing to the jury. I suggest you get in one place and stay  
10 there and not be shuttling back and forth. Whatever he needs,  
11 give to him at one time, but don't be walking back and forth.

12 See you at 2 o'clock.

13 (Luncheon recess taken)

14 (Continued on next page)

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23

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25

E9AZCHA4

Girdauskas - direct

1 A F T E R N O O N S E S S I O N

2 2:00 p.m.

3 THE DEPUTY CLERK: All rise.

4 (Jury entering)

5 THE COURT: Please be seated.

6 All right, Mr. Tehrani.

7 BY MR. TEHRANI:

8 Q. Mr. Girdauskas, before we broke for lunch I was asking you  
9 some questions about the people that you recruited to go to  
10 various doctors and get prescriptions, and you provided a list  
11 of names.12 Approximately, how many people in total did you  
13 recruit?

14 A. About ten people.

15 Q. And why did you recruit them to get prescriptions?

16 A. I was getting half of their prescriptions.

17 Q. Can you explain how that worked?

18 A. I would take them to the doctor, and if they got foot a  
19 prescription for 180, they would have to give me 90.20 Q. So they would get the prescription, they would fill it, and  
21 you would get --

22 A. 90.

23 Q. -- approximately half?

24 A. Yes.

25 Q. Now, you had mentioned earlier in your testimony the

E9AZCHA4

Girdauskas - direct

1 process of washing or cleaning prescriptions?

2 A. Yes.

3 Q. We talked about it generally, but can you again explain  
4 what the process is for washing a prescription?

5 A. Prescription is soaked in brake fluid, the pen ink comes  
6 off. It's wiped down with a swab like a makeup swab, put in  
7 rubbing alcohol, and it's dried between two pieces of paper  
8 towel.

9 Q. And where did you get the prescriptions that you washed?

10 A. Doctors, various doctors.

11 Q. Those prescriptions were written for other things other  
12 than oxycodone?

13 A. Yes.

14 Q. And when did you start, approximately, washing  
15 prescriptions?

16 A. 2009.

17 Q. So again the process, the brake fluid, what exactly does  
18 brake fluid do to the prescription?

19 A. Takes off the pen ink.

20 Q. And then what does the rubbing alcohol do?

21 A. It takes the brake fluid off the paper.

22 Q. And then the process for drying, you mentioned that you put  
23 it between two pieces of paper towels?

24 A. Yes.

25 Q. And how long does it take to dry if you're using paper

E9AZCHA4

Girdauskas - direct

1 towels?

2 A. 15 minutes, ten minutes.

3 Q. And if you wanted to speed that process up, what would you  
4 do?

5 A. You could blow dry it.

6 Q. Were there any problems with using a blow dryer?

7 A. Yes. There is a little blue box on the bottom, that if you  
8 blow dry, it disappears.

9 Q. And how long would the entire process take?

10 A. About a half-hour.

11 Q. Where would you do it typically?

12 A. My house, my brother's house.

13 Q. And, again, what was the goal of washing these  
14 prescriptions?

15 A. To remove what they were written for, to rewrite them for  
16 oxycodone.

17 Q. And when you rewrote them, what names did you put on the  
18 prescriptions?

19 A. Just made up names.

20 Q. Why not your own?

21 A. I already had ones in my name.

22 Q. And why couldn't you have additional ones in your name?

23 A. You need ID to pick them up from the pharmacy if you had  
24 your name on them, so use other names.

25 Q. Now, what, if anything, would happen if you rewrote the

E9AZCHA4

Girdauskas - direct

1 prescription before the paper had actually dried?

2 A. The ink would run.

3 Q. And would the ink run before the paper was dry?

4 A. Yes.

5 Q. And would anything happen if you left the brake fluid on  
6 the prescription too long?

7 A. It turns purple.

8 Q. And you mentioned also that at one point during the process  
9 you would scrub the prescription with some sort of pad?

10 A. Yes.

11 Q. And the process -- that was for what part of the process?

12 A. To remove the excess ink that didn't come off with the  
13 brake fluid.

14 Q. And what would happen if you rubbed too hard?

15 A. There is like a gray background on the prescription. If  
16 you rubbed too hard, the gray background comes off.

17 Q. And when what would happen to the color of the  
18 prescription?

19 A. Turn white.

20 Q. Now, in your experience, are all prescriptions from various  
21 doctors the same color, at least initially?

22 A. Yes.

23 Q. And now who, again, were some of the people that you were  
24 working with to obtain and fill prescriptions?

25 A. Anthony Sales, Mike Penzo, my brother, Doreen, Joe Fasce,

E9AZCHA4

Girdauskas - direct

1 Daniel DiMase.

2 Q. Now, there is a number of photographs in front of you, and  
3 I'm going to go through those in order.

4 Can you take a look at what's been marked as  
5 government Exhibit 317? Who is that?

6 A. That's Anthony Sales.

7 MR. TEHRANI: Your Honor, the government moves 317  
8 into evidence?

9 MR. AGNIFILO: No objection.

10 THE COURT: 317 is in evidence.

11 (Government's Exhibit 317 received in evidence)

12 MR. TEHRANI: And could we publish to the jury?

13 THE COURT: Yes.

14 Q. What's his name again?

15 A. Anthony Sales.

16 Q. How do you know him?

17 A. I know him for years.

18 Q. Going back to when?

19 A. He was friends with my brother Mike.

20 Q. And what was his role as part of your group?

21 A. He filled scripts, he stole scripts, he went to the doctor.

22 Q. And what would he do with the prescriptions that you stole?

23 A. He'd sell them.

24 Q. Just to clarify, when you say the word "script," is that  
25 just short for prescription?

E9AZCHA4

Girdauskas - direct

1 A. Yes.

2 Q. Look at what's marked as government Exhibit 304?

3 A. Uh-huh.

4 Q. Who is that?

5 A. It's his girlfriend Doreen.

6 MR. TEHRANI: Your Honor, the government moves 304  
7 into evidence?

8 MR. AGNIFILO: No objection.

9 MR. RIOPELLE: No objection, your Honor.

10 THE COURT: 304 is received in evidence. You can  
11 publish it.

12 (Government's Exhibit 304 received in evidence)

13 Q. And what was her role?

14 A. She stole prescriptions, she filled fake prescriptions,  
15 sold prescriptions.

16 Q. And how did you know her?

17 A. Through Anthony.

18 Q. Now looking at government Exhibit 305?

19 A. It's Joseph Fasce.

20 MR. TEHRANI: Government moves 305 into evidence?

21 MR. AGNIFILO: No objection.

22 MR. RIOPELLE: No objection.

23 THE COURT: 305 is in evidence.

24 (Government's Exhibit 305 received in evidence)

25 MR. TEHRANI: May we publish?

E9AZCHA4

Girdauskas - direct

1                   THE COURT: Yes.

2 Q. What was his role?

3 A. He did fake scripts, sold scripts, sold pills.

4 Q. How did you know him?

5 A. He worked with my brother.

6 Q. Government Exhibit 316, who is that?

7 A. That's Michael Penzo.

8                   MR. TEHRANI: Government moves 316 into evidence?

9                   MR. AGNIFILO: No objection.

10                  MR. RIOPELLE: No objection.

11                  THE COURT: It's in evidence. You can show it.

12                  (Government's Exhibit 316 received in evidence)

13 Q. And how did you know him?

14 A. Through my brother.

15 Q. And what was his role?

16 A. He stole prescriptions, went to the doctor, sold pills,  
17 sold scripts.

18 Q. Government Exhibit 303, who is that?

19 A. That's Daniel DiMase.

20                  MR. TEHRANI: Government moves 303 in evidence?

21                  MR. AGNIFILO: No objection.

22                  THE COURT: 303 is in evidence. You can show it.

23                  (Government's Exhibit 303 received in evidence)

24 Q. What was his role?

25 A. He stole scripts, wrote scripts, sold pills, went to the

E9AZCHA4

Girdauskas - direct

1 || pharmacy with fake scripts.

2 Q. Look at government exhibit 308, 308 and 306 together?

3 A. Yeah.

4 || Q. Who are they?

5 A. It's me and my brother.

6 Q. 308 is which one?

7 || A. Michael.

8 MR. TEHRANI: Government moves 308 and 306 into  
9 evidence?

0 MR. AGNIFILO: No objection.

11 MR. RIOPELLE: No objection.

2 THE COURT: It's in evidence. You can show it.

13 (Government's Exhibits 306 and 308 received in  
14 evidence)

15 Q. And what was your brother's role?

16 A. He went into the pharmacy with fake scripts, sold pills,  
17 full scripts.

18 Q. Now, all the people that we just talked about in the  
19 photographs that we've seen, are these all people who had  
20 filled prescriptions at Stanley Pharmacy?

21 A. Yes.

22 Q. What was your arrangement with the others regarding the  
23 filled prescriptions?

A. If I wrote them, I would get half their script.

25 0. What do you mean, if you wrote them?

E9AZCHA4

Girdauskas - direct

1 A. If I cleaned the script and wrote it for them, I would get  
2 half their prescriptions.

3 Q. And who would actually go into the pharmacy and fill them?

4 A. They would.

5 Q. What did you do with all the oxycodone pills?

6 A. Sold them, used them.

7 Q. And how did you take the pills?

8 A. I would crush the pills and sniff them.

9 Q. When you first started taking oxycodone, how many pills  
10 were you taking, approximately?

11 A. About three.

12 Q. That's per day?

13 A. Yes.

14 Q. Did that increase?

15 A. Yes.

16 Q. And at your peak, how many pills were you taking?

17 A. 100.

18 Q. Is that per day?

19 A. Yes.

20 Q. Why did you need to keep taking more pills?

21 A. You get sick if you don't have them.

22 Q. Is that a withdrawal symptom?

23 A. Yes.

24 Q. And how long would it take for you to start feeling sick?

25 A. About 12 hours.

E9AZCHA4

Girdauskas - direct

1 Q. 12 hours after the last pill that you took?

2 A. Uh-huh.

3 Q. And for the pills that you sold, how much would you sell  
4 them for?

5 A. Between 20 and \$25.

6 Q. And was that for a particular dosage?

7 A. 30-milligram oxycodone.

8 Q. And so for a bottle of 180 oxycodone, approximately how  
9 much would you be able to sell that for?

10 A. 3600.

11 Q. And between you and the people you were working with,  
12 approximately how many oxycodone pills were you getting a given  
13 month?

14 A. 16,000.

15 Q. And how much money were you making selling the pills?

16 A. About 50,000 a month.

17 Q. What would you do with the money?

18 A. Spend it, drugs.

19 Q. Is there a particular strength of oxycodone that you  
20 preferred?

21 A. 30-milligram.

22 Q. Why?

23 A. Strongest, and tasted good, sniff it.

24 Q. And what would do if the 30-milligram dosage wasn't  
25 available?

E9AZCHA4

Girdauskas - direct

1 A. Get 20s, 15s, 10s first.

2 Q. What do the pills do to you?

3 A. Get me high.

4 Q. And while you were taking those pills, did you continue to  
5 work for Sanitation?

6 A. Yes.

7 Q. And did you drive a Sanitation truck while you're taking  
8 pills?

9 A. Yes.

10 Q. Did you drive other times while on oxycodone?

11 A. Yes.

12 Q. When you first started with the oxycodone pills, where did  
13 you fill the prescriptions?

14 A. CVS, Walgreens.

15 Q. And what, if anything, would you need to do at those  
16 pharmacies to get prescriptions filled?

17 A. You need ID with the name that's on the prescription, and  
18 they called the doctor.

19 Q. And so the prescriptions that you filled at those  
20 pharmacies, were they in your name?

21 A. Yes.

22 Q. And how do you know that the other pharmacies would call  
23 the doctor?

24 A. They would tell you that they have to call the doctor  
25 before I fill the controlled substance.

E9AZCHA4

Girdauskas - direct

1 Q. Now did there come a time when you started filling  
2 oxycodone prescriptions at Stanley Pharmacy?

3 A. Yes.

4 Q. And approximately when was that?

5 A. 2009, late 2009.

6 Q. How did you learn about Stanley?

7 A. Joe Fasce.

8 Q. What did he tell you?

9 A. He said they had 30-milligram oxycodone in stock, and that  
10 he'd fill anything.

11 Q. And why was that important?

12 A. We're using names that weren't -- wasn't my name.

13 Q. Now just for reference, we're talking about the person in  
14 government Exhibit 305?

15 MR. TEHRANI: Could we publish that, Mr. Evert?

16 Q. That's the person you're talking about?

17 A. Yes.

18 Q. Now, there should be in front of you what's been marked for  
19 identification as government Exhibit 351?

20 A. It's 311.

21 THE COURT: What exhibit do you want?

22 MR. TEHRANI: It's in the folder, 351. May I approach  
23 your Honor?

24 THE COURT: Why don't you approach, yes.

25 Q. Do you recognize that?

E9AZCHA4

Girdauskas - direct

1 A. Yes.

2 Q. What is it?

3 A. It's Stanley Pharmacy.

4 Q. Photograph?

5 A. Yes.

6 MR. TEHRANI: Your Honor, the government offers  
7 government Exhibit 351?

8 MR. RIOPELLE: No objection, your Honor.

9 THE COURT: 351 is received in evidence.

10 (Government's Exhibit 351 received in evidence)

11 MR. TEHRANI: May we publish?

12 THE COURT: Yes, you may.

13 Q. Now, we'll get back to this a little bit later, but can you  
14 explain how many entrances there are into the pharmacy?

15 A. There's two.

16 Q. And is there one of the entrances that you typically  
17 referred as to the main entrance?

18 A. It's the one directly behind the bus stop.

19 Q. So on the right-hand side of the photograph?

20 A. Yes.

21 Q. That would be the main entrance walking to the front of the  
22 pharmacy?

23 A. Yes.

24 Q. Where is the other entrance?

25 A. On the side.

E9AZCHA4

Girdauskas - direct

1 Q. That would be on the side of the cross street on the left?

2 A. Yes.

3 Q. Did you refer to that entrance as anything in particular?

4 A. Side entrance, Main Street entrance.

5 Q. So that's Main Street on the left-hand side?

6 A. Yes.

7 Q. Now, the first time that you went into Stanley Pharmacy,  
8 what happened?

9 A. I filled the prescription for oxycodone in my name.

10 Q. And how did you pay for the prescription?

11 A. With my insurance.

12 Q. Who did you deal with?

13 A. Ji.

14 Q. Can you take a look at what's been marked as government  
15 Exhibit 311?

16 A. Yes.

17 Q. Who is that?

18 A. Ji.

19 MR. TEHRANI: Your Honor, the government offers 311?

20 MR. RIOPELLE: No objection.

21 MR. AGNIFILO: No objection.

22 THE COURT: 311 is in evidence. You can show it.

23 (Government's Exhibit 311 received in evidence)

24 Q. And so again who is this individual?

25 A. It's Ji.

E9AZCHA4

Girdauskas - direct

1 Q. Now, after the first time that you filled an oxycodone  
2 prescription at Stanley Pharmacy, did you continue to fill  
3 oxycodone prescriptions?

4 A. Yes.

5 Q. At Stanley Pharmacy?

6 A. Yes.

7 Q. And did you ever pay for your oxycodone prescription again  
8 at Stanley Pharmacy with your insurance?

9 A. No.

10 Q. Why not?

11 A. He didn't take insurance for oxycodone any more.

12 Q. Who said that?

13 A. Ji.

14 Q. And so how did you pay?

15 A. Cash.

16 Q. Every time?

17 A. Yes.

18 Q. Did you use your insurance for any other purpose at Stanley  
19 Pharmacy?

20 A. Yes.

21 Q. What?

22 A. For my asthma medication.

23 Q. Sorry?

24 A. My asthma medication.

25 Q. So you have asthma?

E9AZCHA4

Girdauskas - direct

1 A. Yes.

2 Q. And you would fill your prescription for asthma medication  
3 at Stanley Pharmacy?

4 A. Yes.

5 Q. And you would pay for that with insurance?

6 A. Yes.

7 Q. Did you pay for anything else with cash at Stanley  
8 Pharmacy?

9 A. No.

10 Q. Just oxycodone?

11 A. Yes.

12 Q. How often did you go to Stanley Pharmacy?

13 A. Every day.

14 Q. How often did you go inside?

15 A. Three times a week.

16 Q. And if you did not go inside but you went to Stanley  
17 Pharmacy, what would you do?

18 A. Wait outside for my brother.

19 Q. And why did he go instead of you?

20 A. I probably wrote it, the prescription. He went in.

21 Q. So you would go there together, and your brother would go  
22 in to fill the prescription?

23 A. Yes.

24 Q. And how often did your brother go inside Stanley Pharmacy?

25 A. Every day.

E9AZCHA4

Girdauskas - direct

1 Q. How do you know?

2 A. I was with him.

3 Q. And how many oxycodone prescriptions, approximately, would  
4 he fill every day?

5 A. Four.

6 Q. Do you know whether anyone else was at Stanley Pharmacy  
7 that regularly?

8 A. Yes.

9 Q. Who?

10 A. Joe Fasce, Anthony Sales, Mike Penzo, Dan DiMase.

11 Q. How do you know?

12 A. I seen them.

13 Q. Were there ever occasions where you went into Stanley  
14 Pharmacy and saw other guys from your group there you had not  
15 gone to the pharmacy with?

16 A. Yes.

17 Q. What's the most number of your crew that you remember  
18 seeing inside the pharmacy at one time?

19 A. Three.

20 Q. Now, when you went inside Stanley Pharmacy to fill  
21 prescriptions, did you ever bring more than one prescription at  
22 a time?

23 A. Yes.

24 Q. And, typically, how many would you bring in?

25 A. Three, four.

E9AZCHA4

Girdauskas - direct

1 Q. And did you ever get more than one oxycodone prescription  
2 filled at a given time?

3 A. Yes.

4 Q. What's, to the best your recollection, the most number of  
5 oxycodone prescriptions you left the pharmacy with?

6 A. Two.

7 Q. Now, what was the most number of prescriptions that you  
8 tried to fill at one time?

9 A. 28.

10 Q. And what happened?

11 A. He gave me dates to come back at a later time for them.

12 Q. Can you explain that in a little bit more detail? You walk  
13 into the pharmacy and what happened?

14 A. I handed him an envelope of prescriptions, and Ji handed  
15 them back to me with dates written on post-its on each of the  
16 scripts.

17 Q. And what were you supposed to do with those dates?

18 A. Come return to have them filled.

19 Q. On those future dates?

20 A. On the future dates.

21 Q. And did you ever fill a prescription at Stanley Pharmacy,  
22 and then return later that day to fill another prescription at  
23 Stanley Pharmacy?

24 A. Yes.

25 Q. And what would happen?

E9AZCHA4

Girdauskas - direct

1 A. Fill it.

2 Q. Were the prescriptions that you filled at Stanley Pharmacy,  
3 in your name?

4 A. No.

5 Q. Whose names are on the prescription?

6 A. Made up names.

7 Q. Would you go into Stanley Pharmacy with multiple  
8 prescriptions in multiple different names?

9 A. Yes.

10 Q. What would happen?

11 A. Fill them.

12 Q. Now, during this period of time were you also getting  
13 prescriptions for oxycodone in your own name?

14 A. Yes.

15 Q. And where did you get those?

16 A. Walgreens, CVS, Trust Pharmacy.

17 Q. Why.

18 A. Needed ID.

19 Q. So why did you fill the prescriptions in your name at those  
20 other pharmacies rather than at Stanley Pharmacy?

21 A. You need ID at Stanley.

22 Q. What was the method of payment that you used for the  
23 prescriptions that were in your name that you filled at  
24 Walgreens and --

25 A. Insurance.

E9AZCHA4

Girdauskas - direct

1 Q. Now, you mentioned also that sometimes you would get stolen  
2 prescriptions?

3 A. Yes.

4 Q. Who did you get those from?

5 A. Anthony Sales.

6 Q. Anyone else?

7 A. Penzo.

8 Q. Anyone else?

9 A. Joe Fasce.

10 Q. So we talked about washing prescriptions, and we talked  
11 about what the problems that can arise with a washed  
12 prescription. Can you explain to the jury again what those  
13 problems are?

14 A. There is a safety feature, like a water mark on the back of  
15 the script it's gray, if you scrub too hard that disappears;  
16 too much heat, the blue box disappears. And if you leave it in  
17 brake fluid too long, it turns purpose purple, pinkish.

18 Q. Anything about the ink?

19 A. The ink could run.

20 Q. And why again would the ink run?

21 A. If you waited -- if you didn't wait long enough for it to  
22 dry, it would run on, ink would run.

23 Q. Now, did you ever try to fill washed prescriptions at  
24 Stanley Pharmacy that you thought were badly washed?

25 A. Yes.

E9AZCHA4

Girdauskas - direct

1 Q. In what ways were they badly washed?

2 A. The ink was running, pink, no blue box, water mark was gone  
3 on the background.

4 Q. What happened?

5 A. He filled them.

6 Q. Was a washed prescription of yours ever rejected at Stanley  
7 Pharmacy?

8 A. In the beginning, yeah.

9 Q. Approximately, how often would you get a prescription  
10 rejected?

11 A. Not very often.

12 Q. Now, did Ji ever return a washed prescription to you that  
13 had already been filled?

14 A. Yes.

15 Q. Can you explain what happened in that circumstance?

16 A. He asked me and my brother to get him another script,  
17 because this one didn't look too good.

18 Q. And was that a prescription that you had previously brought  
19 into the pharmacy?

20 A. No.

21 Q. And it had already been filled?

22 A. Yes.

23 Q. So what did you do?

24 A. Brought him a prescription.

25 Q. Why?

E9AZCHA4

Girdauskas - direct

1 A. Keep him happy.

2 Q. Now, you said that you filled prescriptions at Stanley  
3 Pharmacy using multiple names. Were you ever required to show  
4 identification?

5 A. No.

6 Q. Did you ever hear anyone at Stanley Pharmacy call the  
7 doctor's office to verify a prescription?

8 A. No.

9 Q. Did you have to provide any information to fill a  
10 prescription?

11 A. Date of birth.

12 Q. What date of birth did you use?

13 A. Just made up one.

14 Q. And did you use the same date of birth every time?

15 A. No.

16 Q. Now, you talked about a particular occasion where you went  
17 into Stanley Pharmacy with 28 prescriptions and you were told  
18 to return on future dates?

19 A. Yes.

20 Q. Were there other occasions where you dropped off a  
21 prescription to be filled and were told to return to have the  
22 prescription filled at a later time?

23 A. Yes, yes.

24 Q. And in those circumstances, were you given a prescription  
25 paper back?

E9AZCHA4

Girdauskas - direct

1 A. Yes.

2 Q. Do you know why that was?

3 A. People were returning, stealing scripts from people that  
4 brought them in saying the names they were using, he was giving  
5 it to them instead of the person who really brought it in.

6 Q. So, to give an example, you would go into Stanley Pharmacy  
7 with a prescription in someone else's name --

8 A. If someone found out that I had that name, they would get  
9 there first and pick it up.

10 Q. And so giving you the prescription back was a way --

11 A. To prevent that.

12 Q. Did that happen at other pharmacies where you filled  
13 prescriptions?

14 A. No.

15 Q. Do you recall whether anyone you were working with was ever  
16 given an oxycodone prescription, a filled oxycodone  
17 prescription from Stanley Pharmacy without a prescription?

18 A. Yes.

19 Q. And what happened?

20 A. My brother asked Ji if he could bring the script in the  
21 next day. Ji said yeah; filled it, gave him a script, 180  
22 pills.

23 Q. When you say he gave him a script, he gave him the pills?

24 A. Bottle, yes.

25 Q. Did your brother return the next day with the prescription?

E9AZCHA4

Girdauskas - direct

1 A. Yes.

2 Q. Prescription paper?

3 A. Paper.

4 Q. I want to talk now about the process for filling  
5 prescriptions at Stanley Pharmacy.

6 When you first started going to Stanley Pharmacy,  
7 could you walk through the process for getting a prescription  
8 filled?

9 A. You walk up to the counter, you place your prescription in  
10 a basket. The woman would pass it back to Ji. He would put  
11 your pills in the basket. She'd ring it up and you pay for it.

12 Q. And was there anyone else in the back area that you could  
13 see during this process?

14 A. Pharmacist.

15 Q. And how did you identify the pharmacist?

16 A. White lab coat on.

17 Q. Male or female?

18 A. Female, Asian.

19 Q. Now, did the process change over time?

20 A. Yes.

21 Q. How so?

22 A. You'd have to walk in and place your money and the  
23 prescription in a brown bag, and they would pass it back to Ji,  
24 and he'd come around and hand you the pills.

25 Q. Now when you say "they would hand it back to Ji," what

E9AZCHA4

Girdauskas - direct

1 would happen, who would hand it back?

2 A. The counter girls.

3 Q. So you would walk in, you'd have -- you have cash -- did  
4 you bring a bag yourself?

5 A. No.

6 Q. So you walk in with a prescription and cash?

7 A. Cash.

8 Q. And what would happen?

9 A. You place it in a brown bag and they would pass it back to  
10 Ji.

11 Q. Did anything change with respect to the prices that you  
12 were being charged?

13 A. Yes.

14 Q. And what was that change?

15 A. Started at two something, and jumped up to 1,050 for 180  
16 pills.

17 Q. Of what dosage?

18 A. 30-milligram.

19 Q. Did that change happen all at once or were there  
20 incremental steps?

21 A. No, it jumped -- it jumped from two something to seven,  
22 then it jumped up to a thousand.

23 Q. And so that's \$1,000 for one 180 pill prescription of  
24 30 milligrams oxycodone?

25 A. Yes.

E9AZCHA4

Girdauskas - direct

1 Q. And how did you find out about the new prices?

2 A. You just walk in, he'd tell you it's a thousand dollars;  
3 you want it or not?

4 Q. And what were the prices for the other dosages of oxycodone  
5 you got at Stanley Pharmacy?

6 A. The 20s were around 900, 15s were about 600, 10s I think  
7 were 250, and if I was -- I don't really know the price of  
8 them. It wasn't much.

9 Q. Did the pharmacy initially have 20-milligram oxycodone?

10 A. No.

11 Q. Did they eventually get them?

12 A. Yes.

13 Q. What happened?

14 A. He said he was having trouble getting the 30s. So I asked  
15 him to get 20s. And he said they didn't make them. And I said  
16 yeah, they make them. And he had them, the next day he had  
17 them.

18 Q. And who is he?

19 A. Ji.

20 Q. How did you find out about the change in payment method  
21 policy, the cash in the bag policy?

22 A. Just walked in one day and that was the way I had to do it.  
23 He gave us the bag and said put the money and the script in it.

24 Q. Now, the thousand dollars that you were paying per  
25 prescription of 30-milligram oxycodone, how did that price

E9AZCHA4

Girdauskas - direct

1 compare to the same prescription at other pharmacies?

2 A. Other pharmacy's about 200 bucks.

3 Q. How do you know?

4 A. I filled them before.

5 Q. So why did you continue going to Stanley Pharmacy?

6 A. I needed more pills.

7 Q. Why didn't you just pay \$200 at another pharmacy?

8 A. You needed ID and they called the doctor.

9 Q. So after you put the -- getting back to the process for  
10 filling the prescriptions at Stanley.

11 After you put the cash in the bag and the cash in the  
12 bag was handed back to Ji, how was the filled prescription  
13 given back to you?

14 A. Ji would hand it to us. He'd come around the counter.

15 Q. Now, was that always the case?

16 A. No, not in the beginning.

17 Q. What was the process in the beginning?

18 A. You put your prescription in the basket, they hand it to  
19 Ji, put your filled bottle in the basket, and you ring it up at  
20 the counter.

21 Q. And so the prescription, the filled prescription would be  
22 given back to you by one of the cashiers?

23 A. Yes.

24 Q. And then the process ultimately changed and, your testimony  
25 was that Ji handed it to you, personally?

E9AZCHA4

Girdauskas - direct

1 A. Yes.

2 Q. Now where in the pharmacy would Ji personally hand you the  
3 oxycodone prescriptions?

4 A. The right-hand side or the left-hand side, like a little  
5 area, seating area.

6 Q. And you're talking about right-hand side, left-hand side  
7 with respect to the main counter of the cashiers?

8 A. Yes.

9 Q. What did you do with the bottles of oxycodone once you  
10 received them from Ji?

11 A. Take the label off.

12 Q. Why did you do that?

13 A. You get caught with somebody else's name on the bottle, you  
14 can get in more trouble if you have one without a name on it.

15 Q. And where would you do that?

16 A. At the lotto stand in the front of the store.

17 Q. Inside the pharmacy?

18 A. Yeah.

19 Q. Did there come a time when Ji said anything to you about  
20 the amount of oxycodone he was selling?

21 A. He said he got a letter from the DEA and he could no longer  
22 do four day, he could only do two.

23 Q. So what happened?

24 A. Start doing two, one in the morning, one in the afternoon.

25 Q. And was that for a particular dosage?

E9AZCHA4

Girdauskas - direct

1 A. 30-milligram.

2 Q. Did that affect your ability to get other dosages of  
3 oxycodone?

4 A. No.

5 Q. So the cutback was to go down to two 30-milligram  
6 prescriptions per day?

7 A. Yes.

8 Q. And in addition to that, you could get prescriptions for  
9 other dosages.

10 A. Yes.

11 Q. Did you ever speak with Ji on the phone?

12 A. Yes.

13 Q. Why?

14 A. I told him I was going to be a little late, if he could  
15 stay open; asked him if he had certain strengths of oxycodone.

16 Q. Why did you do that?

17 A. So I could write my prescription according to what  
18 strengths he had in stock.

19 Q. And did you ever go into the pharmacy with a prescription  
20 for a dosage that the pharmacy didn't have in stock?

21 A. Yes.

22 Q. What happened?

23 A. I went to the car and wrote another one that they had in  
24 stock.

25 Q. Another prescription for oxycodone in the dosage that the

E9AZCHA4

Girdauskas - direct

1       pharmacy had in stock?

2               Now, again, who else worked at the pharmacy?

3       A. Counter girls, the lotto guy, Ji, and the pharmacist.

4       Q. And where did the pharmacist work?

5       A. Ji's right-hand side.

6       Q. In the back area of the pharmacy?

7       A. Yes.

8       Q. And what did she do?

9       A. She filled bottles of pills and put labels on bottles.

10      Q. And was she the only one to put bottles in pills, I mean  
11       put pills in bottles?

12      A. Ji did also.

13      Q. And what was the pharmacist wearing?

14      A. White lab coat.

15      Q. Now, again, in relation to the cash register, where did Ji  
16       work?

17      A. Behind the wall that was -- there was like a little aisle  
18       between the cash register, there is a wall. Behind that he  
19       worked.

20      Q. And this wall, what was on this wall?

21      A. Various products.

22      Q. Was there also shelving?

23      A. Shelving, yes.

24      Q. And could you see through the wall?

25      A. Yes.

E9AZCHA4

Girdauskas - direct

1 Q. How so?

2 A. There was a cut out.

3 Q. And where did the pharmacist work?

4 A. Right next to Ji, right-hand side.

5 Q. And you could see her?

6 A. Yes.

7 Q. From the front of the pharmacy?

8 A. Yes.

9 Q. Did you ever make eye contact with her?

10 A. Once or twice.

11 Q. Now take a look at what's in front of you as government  
12 exhibit 1006. What does that appear to you to be?

13 A. It's a layout of Stanley Pharmacy.

14 Q. And does it appear to you to be approximately a depiction  
15 of the pharmacy during the period of time when -- where you  
16 went in there?

17 A. Yes.

18 MR. TEHRANI: Your Honor, the government offers  
19 government exhibit 1006?

20 MR. AGNIFILO: No objection.

21 THE COURT: 1006 received in evidence.

22 You can display it.

23 (Government's Exhibit 1006 received in evidence)

24 Q. Now, we talked previously about there being two entrances  
25 to the pharmacy.

E9AZCHA4

Girdauskas - direct

1                   So there is a main entrance and side entrance. Could  
2 you describe where the main entrance is?

3                   A. The main entrance is on Palisade Avenue.

4                   Q. So it's the very top of the diagram?

5                   A. Yes.

6                   Q. And where is the lotto area?

7                   A. Lotto area is to the -- when you walk in, it's to the  
8 right.

9                   Q. To the immediate -- if you were to turn right as soon as  
10 you walked in, that would be --

11                   A. The lotto.

12                   Q. The lotto area.

13                   Now what about the cash registers that you were  
14 referring to?

15                   A. Straight ahead at the OTC counter, there's two.

16                   Q. Two cash registers?

17                   A. Yes.

18                   Q. One closest to the wall, and then one closer to the aisle  
19 there?

20                   A. Yeah.

21                   Q. Now, where is the side entrance that you're referring to?

22                   A. Main Street.

23                   Q. And that's that dark area on -- where the dark sort of door  
24 area on Main Street?

25                   A. Yes.

E9AZCHA4

Girdauskas - direct

1 Q. And did you typically use one of the entrances as opposed  
2 to the other?

3 A. The side entrance.

4 Q. Now, where did Ji work?

5 A. Behind the RX counter.

6 Q. And the RX counter is long there. We'll talk about exactly  
7 the same all the way across.

8 But using the words RX and counter, where,  
9 approximately, did Ji work?

10 A. Where the R and X is.

11 Q. And where did the pharmacist work?

12 A. Where the U and the N are in counter.

13 Q. Now, this counter separating the front area -- let me step  
14 back.

15 The employees who worked at the registers, they worked  
16 behind the OTC counter?

17 A. Yes.

18 Q. And the area between where the register employees worked  
19 and where Ji and the pharmacist worked, was that -- can you  
20 describe again the separation between the front area and the  
21 back area?

22 A. It was a floor to ceiling wall with products with a cut  
23 out, so you could see straight to the back.

24 Q. Cut out in the middle of the wall?

25 A. Middle, yes.

E9AZCHA4

Girdauskas - direct

1 Q. And was this, was the RX counter the same all the way  
2 across?

3 A. No.

4 Q. Where was it different?

5 A. To the left-hand side of the Main Street Entrance. It was  
6 a counter where you could speak to the pharmacist if you had  
7 to. It was about chest height.

8 Q. So the wall with shelves and products ended before you got  
9 to the side area?

10 A. Ended at the end of the OTC counter, right about there.

11 Then it was like an area where storage, and they could come to  
12 talk to you if they had to.

13 Q. So that side area was just a counter?

14 A. Yes.

15 Q. And if you walked into the side entrance, what is  
16 immediately in front of you?

17 A. In the Main Street entrance?

18 Q. The Main Street entrance, yeah?

19 A. Or the front entrance?

20 Q. Seating area?

21 A. Yeah. Seating area is right -- as soon as you walk in the  
22 side entrance.

23 Q. Now from that side entrance, could you see into the back  
24 area of the pharmacy?

25 A. Yes.

E9AZCHA4

Girdauskas - direct

1 Q. And could you see the pharmacist?

2 A. Yes.

3 Q. Could you see what she was doing from that area?

4 A. Yes.

5 Q. Now, where were the areas of the pharmacy where you would  
6 speak to Ji or Ji would hand you the filled oxycodone bottles?

7 A. It was to the left, left-hand side of RX counter and all  
8 the way to the right.

9 Q. So could you describe both of those areas? All the way to  
10 the left this, the counter didn't go all the way to the wall?

11 A. No, it stopped. There was a little area where you could  
12 walk through.

13 Q. And that's one of the areas where you would speak with Ji.  
14 And the other area was where?

15 A. When you walk in the Main Street entrance.

16 Q. At that side counter?

17 A. Little side counter, yes.

18 Q. And that's the side area of the pharmacy closest where the  
19 pharmacist works?

20 A. Yes.

21 MR. TEHRANI: Your Honor, I have now have a  
22 stipulation to read.

23 THE COURT: Yes, go ahead.

24 MR. TEHRANI: It is hereby stipulated and agreed by  
25 and between United States of America by Preet Bharara, United

E9AZCHA4

Girdauskas - direct

1 States Attorney, Elisha Kobre and Daniel Tehrani, Assistant  
2 United States Attorney of counsel, and Christina Chai and Hi  
3 Jong Lee, the defendants by and through their attorneys Marc  
4 Agnifilo, Esquire, and Roland Riopelle, Esquire that:

5 One, government exhibit 700 and C is a CD concerning  
6 13 folders labeled government exhibits 714A through 714C, and  
7 government exhibits 714E through 714N. Each folder contains  
8 clips of surveillance video recorded at Stanley Pharmacy in  
9 Yonkers, New York referred to as Stanley Pharmacy.

10 The video files from which the clips were made were  
11 stored on a video hard drive tower receiver at Stanley  
12 Pharmacy.

13 The original video file names for the files from which  
14 each of the clips were made are included in the names of the  
15 respective folders on government exhibit 700 and C. The file  
16 names contain among other information the following: The  
17 particular camera that recorded the video, the date the video  
18 was taken and the start time of the video. For example, the  
19 clips contained on government exhibit 714A were from the file  
20 DVR 502012, 1203, underscore 122846 underscore 00015300. That  
21 file was recorded by camera number five on December 3rd, 2012,  
22 starting at 12:28 p.m. Within each folder are clips taken from  
23 the recording listed in the folder names. Clips are sub marked  
24 with exhibit numbers. For example, government exhibit 714A  
25 contains five clips marked government exhibit 714A1 through

E9AZCHA4

Girdauskas - direct

1 714A2.

2 It is further stipulated and agreed that this  
3 stipulation, which is government Exhibit 1,109 and government  
4 exhibits 700C, 714A through 714C, and 714E through 714N  
5 inclusive and all of the sub marked video clips contained on  
6 714 -- I'm sorry -- 700 and C, may be received in evidence as  
7 government exhibits at trial.

8 THE COURT: Received in evidence.

9 (Government's Exhibits 1,109, 700C, 714-714C, and  
10 714E-714N received in evidence)

11 MR. TEHRANI: Thank you your Honor. Could we look at  
12 714A3, which is a video clip from a folder on December 3rd,  
13 2012. Now, we'll pause at the beginning of the clip here.

14 Q. Mr. Girdauskas, can you explain where this surveillance  
15 video is taken from?

16 A. The Main Street entrance.

17 Q. So this is the side entrance of the pharmacy?

18 A. Yes.

19 Q. Now what is immediately to the left?

20 A. The counter.

21 Q. That's the side counter you're talking about?

22 A. Yes.

23 Q. That's one of the areas where you would receive medications  
24 from Ji?

25 A. Yes.

E9AZCHA4

Girdauskas - direct

1 Q. And immediately in front of you is the seating area?

2 A. Yes.

3 Q. Now, on this video where does the pharmacist work?

4 A. Behind the counter.

5 THE COURT: Did you say behind the counter?

6 THE WITNESS: Behind the counter, yes.

7 Q. And is it behind the counter closest to the door?

8 A. Yes.

9 Q. And the shelving that you were describing previously,  
10 that's sort of towards the back of the surveillance there?

11 A. Yes.

12 Q. And you can see from the front area through that shelving  
13 into the back area?

14 A. Yes.

15 MR. TEHRANI: Now, if we can play the video and pause  
16 it about 14 seconds.

17 (Video played)

18 Q. Now, who is that behind the side counter?

19 A. It's Ji.

20 Q. And he's wearing appears to be a bluish shirt?

21 A. Yes.

22 Q. Who is the individual walking over towards Ji?

23 A. It's my brother, Michael.

24 MR. TEHRANI: Now can we play to --

25 MR. RIOPELLE: I'm sorry, I didn't hear the last

E9AZCHA4

Girdauskas - direct

1 answer.

2 THE WITNESS: It's my brother, Michael.

3 MR. RIOPELLE: Thank you.

4 MR. TEHRANI: Now, could we play to 33 seconds?

5 (Video played)

6 Q. What is your brother doing?

7 A. He's speaking with Ji.

8 Q. Could we pause it?

9 Where does the pharmacist work in connection to where  
10 this conversation is taking place?

11 A. Directly to the right of my brother.

12 Q. To the left of Ji?

13 A. Yeah.

14 MR. TEHRANI: Continue playing, please?

15 (Video played)

16 MR. TEHRANI: Pause that?

17 Q. Who is the individual that's now walking behind the  
18 counter?

19 A. Pharmacist.

20 Q. How do you know?

21 A. Lab coat.

22 Q. And what does she appear to be doing?

23 A. Just walking back there.

24 THE COURT: She's what?

25 THE WITNESS: Walking.

E9AZCHA4

Girdauskas - direct

1                   THE COURT: Walking?

2                   MR. TEHRANI: And can we play and then pause it about  
3 246?

4                   Q. And so she walked back to the particular area behind the  
5 counter. That's where she typically worked?

6                   A. Yes.

7                   MR. TEHRANI: Could we play and pause it three  
8 minutes?

9                   Q. Again, what appears to be happening here?

10                  A. My brother's talking to Ji.

11                  MR. TEHRANI: Can we now play and pause at three  
12 minutes and 11 seconds?

13                  (Video resumed)

14                  Q. Who is that now on the screen?

15                  A. Pharmacist.

16                  Q. And walking behind who?

17                  A. Ji.

18                  Q. And who is she speaking with?

19                  A. My brother.

20                  MR. TEHRANI: Now could we play and pause at 325?

21                  (Video resumed)

22                  Q. Where does she appear to go?

23                  A. Back to her station.

24                  Q. Now look at government exhibit 714A4. This is a clip from  
25 the same day. What appears to be happening at the beginning of

E9AZCHA4

Girdauskas - direct

1 this?

2 A. My brother's walking over to the counter.

3 MR. TEHRANI: And could we play and pause at a minute?

4 (Video played)

5 MR. TEHRANI: Just a little bit further. Pause it.

6 Q. What appears to be happening right there?

7 A. He gave my brother bottles of pills.

8 Q. How many bottles does he appear to give your brother?

9 A. Two.

10 MR. TEHRANI: Play the remainder of the video.

11 (Video resumed)

12 Q. Now, Mr. Girdauskas, going to show you what's been marked  
13 as government exhibits 203, 206, 209, 210, 214, 216, 220 and  
14 233.15 MR. TEHRANI: And, your Honor, I would move at this  
16 time to offer those into evidence, subject to connection.

17 THE COURT: Any objection?

18 MR. RIOPELLE: No objection, your Honor.

19 MR. AGNIFILO: No.

20 THE COURT: They're received in evidence.

21 (Government's Exhibits 203, 206, 209, 210, 214, 216,  
22 220 and 233 received in evidence)

23 MR. TEHRANI: May I approach?

24 THE COURT: Yes.

25 Q. Now, Mr. Girdauskas, what are those?

E9AZCHA4

Girdauskas - direct

1 A. Prescriptions.

2 Q. And have you previously reviewed certain of those  
3 prescriptions?

4 A. Yes.

5 Q. How do you know?

6 A. My initials and the date are on them.

7 Q. So after the date where you reviewed them, your initials  
8 and the date that you reviewed them were put on the subset that  
9 you reviewed?

10 A. Yes.

11 Q. And what were the portions that you put your initials on  
12 and reviewed meant to indicate?

13 A. That I wrote the prescription.

14 Q. So the portions that are separately clipped that have a  
15 sticker with your initials and date, are all prescriptions that  
16 you personally wrote?

17 A. Yes.

18 Q. Now, before we get to those, I want to show you what's been  
19 marked as government Exhibit 234.

20 MR. TEHRANI: Your Honor, the government also offers  
21 this subject to connection?

22 MR. AGNIFILO: No objection.

23 THE COURT: Any objection?

24 MR. RIOPELLE: No objection, your Honor.

25 THE COURT: 234 is received in evidence.

E9AZCHA4

Girdauskas - direct

1 (Government's Exhibit 234 received in evidence)

2 Q. Now, what does government Exhibit 234 appear to you to be?

3 A. A prescription pad.

4 Q. Does it appear to you to be unused?

5 A. Unused.

6 MR. TEHRANI: Now, can we put up 234?

7 Q. Now, when you were washing prescriptions, what features of  
8 the prescription did you attempt to preserve?

9 A. The bottom, the pharmacist test area, the blue box. Right  
10 now it says void, but it's a water mark that's in the  
11 background, try to preserve that too, and the writing doesn't  
12 run, the bar code.

13 Q. What do you mean you try to preserve the bar code?

14 A. If you left it in the brake fluid too long, it would run  
15 together and wouldn't be able to scan.

16 Q. Okay. So starting first with government Exhibit 214.

17 So looking at the set of prescriptions that are  
18 specifically designated as the ones you previously reviewed?

19 A. Yes.

20 Q. Generally speaking, when you wrote prescriptions, what date  
21 did you write on a prescription?

22 A. The date that I was going into the pharmacy.

23 Q. Why?

24 A. You only have 30 days and the prescription is not valid any  
25 more. So you try to get there the date as soon as possible, if

E9AZCHA4

Girdauskas - direct

1 you gave us a date too far away.

2 Q. So you would date the prescription as late as you possibly  
3 could?

4 A. Yeah.

5 Q. Which is always the date that you drop it off into the  
6 pharmacy?

7 A. Yes.

8 Q. So looking at the first prescription?

9 A. Yes.

10 Q. What is it dated?

11 A. 10/17/12.

12 Q. And so what does that mean?

13 A. It's the date I brought it in.

14 Q. And then turning it over to the back?

15 A. Filled on 10/20/12.

16 Q. And so what does that mean to you?

17 A. Couple days before I filled it, gave -- told us to come  
18 back.

19 Q. Now looking at -- I'm going to refer to the prescriptions  
20 by the serial number. And what I'll do is I'll refer to the  
21 last four. So, for example, the one on the screen right now  
22 would be referring referred to -- if my eyesight is good  
23 enough -- WL 00.

24 With respect to the prescriptions in front of you,  
25 would you please take a look at N768?

E9AZCHA4

Girdauskas - direct

1 A. Yes.

2 THE COURT: Do you want to identify that by government  
3 exhibit?

4 MR. TEHRANI: I'm sorry?

5 THE COURT: Why don't you identify it by government  
6 exhibit, because that's what we keep track of.7 MR. TEHRANI: So they're all in government Exhibit  
8 214.

9 THE COURT: Okay.

10 Q. And within 214, if we could look at N768?

11 Now, what do you notice about that prescription?

12 A. Ink's running, the blue box is missing, the ink is running.

13 Q. And?

14 A. Ran through the back.

15 Q. Could we look at the back of the prescription? Could we  
16 take a look at 9N73?17 A. It's purple in the corners, turned pink, the ink's running,  
18 no blue box.

19 Q. Now what about 3Y61?

20 A. It's the water mark's running, it's really light, it's  
21 white.

22 Q. Again, what does it mean that it's white?

23 A. Scrubbed too hard.

24 Q. Looking at MC49?

25 A. It's purple in the corners, the ink's running, ran through

E9AZCHA4

Girdauskas - direct

1 the back a little bit.

2 Q. Now looking at R791?

3 A. The ink ran, no blue box, the water mark's rubbed off. You  
4 could still see a little bit of the writing underneath.

5 Q. And could you turn it over?

6 A. Bleed through the back.

7 Q. 9N03?

8 A. There is no blue box. The ink is running.

9 Q. QP18?

10 A. The ink ran everywhere, through the back.

11 Q. What about the bar code?

12 A. Bar code's run together.

13 Q. 4189?

14 A. It's really light, scrubbed hard.

15 Q. TB28?

16 A. It's turning purple up top, it's lighter on the bottom,  
17 ink's running.

18 Q. TB30?

19 A. You could still see some of the writing underneath.

20 Q. What do you mean by that?

21 A. The writing, the original prescription, all the writing  
22 didn't come off, try to write over and hide some of the ink  
23 that's left over.

24 Q. So again this was a prescription that was originally  
25 written for something other than oxycodone?

E9AZCHA4

Girdauskas - direct

1 A. Yes.

2 Q. And on the original that you're looking at right now, you  
3 can still see some of that writing?

4 A. Yes.

5 Q. T752?

6 A. The ink's running. It's purple.

7 Q. And again what would cause it to be purple?

8 A. Leave it in the brake fluid too long, not take it all off.

9 Q. QP78?

10 A. 76 I got. I don't have 78. Yeah, I got it. Ink ran.

11 It's purple up top.

12 Q. Could you turn it over?

13 A. Ran through the back.

14 Q. Do you notice anything about the refill box in this  
15 prescription?

16 A. Originally had five refills. You could still see it  
17 through the X.

18 Q. Do you know whether you can get oxycodone prescriptions  
19 with refills?

20 A. You can't.

21 Q. QP76. You notice --

22 A. I'm looking for it. Ink ran. You could still see the  
23 writing underneath. Doctor's signature is still underneath.

24 Q. QQ90?

25 A. It's purple up top, the ink's running, no -- it's lighter

E9AZCHA4

Girdauskas - direct

1 on the bottom. There is no blue box.

2 Q. Does it appear to you that the writing on the top left is  
3 running?

4 A. Yeah.

5 Q. Is that your handwriting?

6 A. No.

7 Q. So what does it mean to you that the writing at the top  
8 left is running?

9 A. It's written on when it was wet.

10 Q. MC37?

11 A. Ink's running, it's lighter in the middle, no blue box.

12 Q. QZ79?

13 A. You could still see the writing underneath. The ink's  
14 running, no blue box.

15 Q. R127?

16 A. It's really light, white almost, scrubbed hard. Still see  
17 some of the ink underneath, no blue box.

18 MR. TEHRANI: Your Honor, with the Court's permission,  
19 I'd like to hand out hand around the physical prescriptions?

20 THE COURT: Yes.

21 MR. TEHRANI: And I'd also like to hand around the  
22 unused prescription pad?

23 THE COURT: Yes. It's 234?

24 MR. TEHRANI: Yes, your Honor.

25 (Provided to the jury)

E9AZCHA4

Girdauskas - direct

1 MR. TEHRANI: Would you like me to continue, your  
2 Honor?

3 THE COURT: Yes, please.

4 Q. Taking a look at government Exhibit 206?

5 A. Yes.

6 Q. Who is that a prescription pad for.

7 A. It's a pediatrician.

8 Q. What's his name?

9 A. Dr. Dagli.

10 Q. How do you know that Dr. Dagli is a pediatrician?

11 A. My children went there.

12 Q. How did you get the prescriptions that you wrote that are  
13 part of government Exhibit 206?

14 A. From my children, prescriptions they were written.

15 Q. So those were prescriptions that Dr. Dagli wrote for your  
16 children?

17 A. Yes.

18 Q. That you washed and turned into oxycodone prescriptions?

19 A. Yes.

20 Q. Now, do you recall who went into Stanley Pharmacy to fill  
21 those, of those that you wrote?

22 A. My brother.

23 Q. How old is he?

24 A. He's 37.

25 Q. That means he's born in what year?

E9AZCHA4

Girdauskas - direct

1 A. '77.

2 Q. Now when you were filling prescriptions at Stanley  
3 Pharmacy, did you have to provide a date of birth?

4 A. Yes.

5 Q. And was that date of birth written on a prescription?

6 A. Yes.

7 Q. Where?

8 A. Top right.

9 Q. So if we're looking at the first, the first prescription  
10 there that's on the screen, the 3/19/81 is the date of birth  
11 that was given?

12 A. Yes.

13 Q. And then, for example, if we're to look at N914, what's the  
14 date of birth?

15 A. N914? 10/10/89.

16 Q. So that's approximately how many years after your brother's  
17 birthday?

18 A. 12 years.

19 Q. Do you notice anything else about that prescription?

20 A. It's really light.

21 Q. Take a look at QJ58? What's the date of birth on that  
22 prescription?

23 A. 8/2/91.

24 Q. Approximately how many years after your brother was born?

25 A. 13, 14 years.

E9ATCHA5

Girdauskas - direct

1 Q. Now look at W804. What do you notice about that  
2 prescription?

3 A. No blue box, date of birth is 9/2/80.

4 Q. What about W807?

5 A. It's light, no blue box, the bar code is running, 10/15/79  
6 is the date of birth.

7 Q. Now look at Government Exhibit 203. These are  
8 prescriptions for which doctor?

9 A. Judith Berger.

10 Q. Do you recall prescriptions from Dr. Berger.

11 A. Yes.

12 Q. What do you recall about those?

13 A. Stolen pads.

14 Q. So where did you get them from?

15 A. Anthony Sales and his wife Doreen.

16 Q. How did you get them?

17 A. Bought them.

18 Q. Now looking at the prescription numbers in the bottom right  
19 corner, notice anything?

20 A. They're in order.

21 Q. Why?

22 A. That's how many I bought at one time.

23 Q. Looking at the first five, what's the date written on  
24 those?

25 A. 7/25/12, 7/25/12, 7/25/12, 7/25/12.

E9ATCHA5

Girdauskas - direct

1 Q. What does it mean they're all written with the same date?

2 A. I bought them all at once.

3 Q. Now looking at the back of those prescriptions, were they  
4 all filled on the same date?

5 A. 7/28, 7/31, 7/28, 7/26, 7/27.

6 Q. So the answer is no?

7 A. No.

8 Q. Now looking at J975 and J976, those are in sequential  
9 order, right?

10 A. Mm-hmm.

11 Q. And were they both filled on the same date?

12 A. 8/3, yes.

13 Q. Which date?

14 A. 8/3.

15 Q. August 3rd, 2012?

16 A. Yes.

17 Q. Could you look at J988.

18 A. Yes.

19 Q. When was that filled?

20 A. 8/3.

21 Q. Same date?

22 A. Yes.

23 Q. Could you look at Government Exhibit 220.

24 A. Mm-hmm.

25 Q. Who are those prescriptions from?

E9ATCHA5

Girdauskas - direct

1 A. Mike Penzo.

2 Q. What doctor?

3 A. Dr. Savino.

4 Q. What kind of doctor is Dr. Savino?

5 A. Pediatrician.

6 Q. How do you know?

7 A. Because I bought the paper, the books.

8 Q. Who did you buy them from?

9 A. Mike Penzo.

10 Q. Look at B626. Do you notice anything?

11 A. Void all over it.

12 Q. Now these were stolen prescriptions, right?

13 A. Yes.

14 Q. So they weren't washed?

15 A. No.

16 Q. Why would there be void all over it?

17 A. It was placed next to another prescription that was wet or  
18 some sort of brake fluid. It's a safety feature. The brake  
19 fluid takes it off, but it stayed on, it says void.

20 Q. But brake fluid wasn't specifically applied to this  
21 prescription?

22 A. No.

23 Q. So where would the void come from?

24 A. Another prescription was laid on top of it that was washed.

25 Q. Look at Government Exhibit 216. Which doctor are these

E9ATCHA5

Girdauskas - direct

1 for?

2 A. Cain Ranjan.

3 Q. Look at 6970, notice anything?

4 A. Some of the ink is running, no blue box, it's really light,  
5 you can still see the pressure of the doctor signature.

6 Q. 6972.

7 A. Ink is running, there's no blue box, it's really light.

8 Q. 4426.

9 A. Ink's running, no blue box.

10 Q. Does it appear to you that the ink is written in different  
11 colors?

12 A. Yep.

13 Q. 44?

14 A. Ink's running, still see the doctor's signature underneath,  
15 no blue box.

16 Q. 4680.

17 A. The date is written in a different pen, purple on top,  
18 purple on the bottom, no blue box.

19 Q. 4022?

20 A. Ink's running, still void in the corner.

21 Q. Up to this point in Dr. Ranjan's prescriptions, have those  
22 been washed?

23 A. Yes.

24 Q. Those have been prescriptions from Dr. Ranjan that you  
25 washed?

E9ATCHA5

Girdauskas - direct

1 A. Yes.

2 Q. Was this prescription washed?

3 A. No.

4 Q. How do you know?

5 A. I can feel it. I can tell. It has void on it.

6 Q. So again, it's not washed, why does it say void?

7 A. It was touching another prescription that was washed.

8 Q. If we look at 4023.

9 A. Void.

10 Q. 4024?

11 A. Void.

12 Q. 4025?

13 A. Same thing all over the whole thing, void.

14 Q. And those four I just read are in sequential order?

15 A. Yes.

16 Q. Look at 3W12.

17 A. Yes ink's running, it's purple, still see the writing  
18 underneath.

19 Q. 3W13.

20 A. Still see the doctor's writing underneath.

21 Q. 3W14?

22 A. Pinkish on one side, top, too no blue box, ink's running in  
23 the corner, you can still see the doctor writing.

24 Q. Government Exhibit 209. Which doctor are these from?

25 A. Dr. Kandalaft.

E9ATCHA5

Girdauskas - direct

1 Q. What kind of doctor is Dr. Kandalaft?

2 A. He's a psychiatrist.

3 Q. On the top what does it say?

4 A. Westchester Psychiatric Associates.

5 Q. Were these prescriptions washed?

6 A. Yes.

7 Q. Why?

8 A. Because I bought them. They were already written out.

9 Q. You purchased prescriptions that had been written by  
10 Dr. Kandalaft to someone else?

11 A. Yes.

12 Q. And then you washed them?

13 A. Yes.

14 Q. Can you look at 1W41, please. Do you notice anything?

15 A. Blue box is put on in crayon.

16 MR. TEHRANI: Zoom in on the box.

17 Q. Who did that?

18 A. I did.

19 Q. Why?

20 A. Blue box disappeared.

21 Q. Notice anything else about the prescription?

22 A. Ink's running.

23 Q. 9329.

24 A. Ink's running.

25 Q. FP76.

E9ATCHA5

Girdauskas - direct

1 A. It's light, ink's running.

2 Q. FP78.

3 A. It's light also, no blue box.

4 Q. FX27.

5 A. Ink's running, purple up top, no blue box, the bar code's  
6 running.

7 Q. G166.

8 A. Ink's running, it's light, purple up top.

9 MR. TEHRANI: Your Honor, what time do you intend to  
10 take a break?

11 THE COURT: We'll take our afternoon recess now.

12 We'll resume at 3:30.

13 (Jury not present)

14 THE COURT: Mr. Tehrani, how much more do you have?

15 MR. TEHRANI: I have about ten minutes, your Honor.

16 THE COURT: Thank you.

17 See you at 3:30.

18 (Recess taken)

19 (Jury present)

20 THE COURT: Mr. Tehrani.

21 BY MR. TEHRANI:

22 Q. We just finished talking about Government Exhibit 209.

23 A. Yes.

24 Q. And the first prescription is the one that was colored in?

25 A. Yes.

E9ATCHA5

Girdauskas - direct

1 MR. TEHRANI: May I pass that one prescription around?

2 THE COURT: Yes, you may.

3 Q. Looking now at Government Exhibit 210, which doctor are  
4 those prescriptions for?

5 A. Dr. Kharouba.

6 Q. Look at J893.

7 A. White, still see what the doctor wrote underneath it, ink's  
8 running in the corner, it's lighter.

9 Q. And what else again?

10 A. You can see what the doctor wrote underneath.

11 Q. W111.

12 A. You can see what the doctor wrote underneath, it's light.

13 Q. VZ99.

14 A. You can see what the doctor wrote underneath, ink's running  
15 a little bit, it's lighter.

16 Q. 2T86.

17 A. See what the doctor wrote, it's light.

18 Q. VZ97.

19 A. It's light, you can see what is underneath.

20 MR. TEHRANI: May I pass this stack around to the  
21 jury?

22 THE COURT: Yes, you may.

23 Q. Government Exhibit 233. Which doctor is this?

24 A. Dr. Rabadi.

25 Q. Look at CM39.

E9ATCHA5

Girdauskas - direct

1 A. The ink is running, it's light, no blue box.

2 Q. Notice anything about the bar code?

3 A. Bar code is running.

4 Q. KZ11.

5 A. It's light, watermark on the background is gone.

6 Q. KZ08.

7 A. It's light also.

8 Q. D858.

9 A. Light, no blue box.

10 Q. Mr. Girdauskas, did there come a time when Stanley Pharmacy  
11 shut down?

12 A. Yes.

13 Q. When was that?

14 A. January 2013.

15 Q. Where did you get oxycodone after that?

16 A. I didn't.

17 Q. What did you do?

18 A. I just started using heroin.

19 Q. Why?

20 A. I needed it.

21 MR. TEHRANI: No further questions, your Honor.

22 THE COURT: Are you going to proceed now,  
23 Mr. Agnifilo?

24 MR. AGNIFILO: Yes, your Honor.

25 CROSS-EXAMINATION

E9ATCHA5

Girdauskas - cross

1 BY MR. AGNIFILO:

2 Q. Good afternoon, Mr. Girdauskas.

3 A. Good afternoon.

4 Q. We never before, have we?

5 A. No.

6 Q. I really only have a couple questions for you. You said  
7 you spoke on the phone with Ji from time to time, correct?

8 A. Yes.

9 Q. How would you reach him or how would he reach you?

10 A. I called the pharmacist.

11 Q. And you would speak to him?

12 A. Yes.

13 Q. And when you spoke to him, what sort of things did you  
14 discuss during these phone calls?

15 A. What prescriptions were in stock. That's it. If he would  
16 stay open a little later if I would be late.

17 Q. Ji would tell what you he had in stock and you might ask  
18 from time to time to stay open a little later, correct?

19 A. Yes.

20 Q. On these times when he would stay open later, when you went  
21 there, would he be the only one there?

22 A. Yes.

23 Q. When you went to Stanley Pharmacy and you had conversations  
24 about these illegal prescriptions, it was with Ji every time,  
25 correct?

E9ATCHA5

Girdauskas - cross

1 A. Yes.

2 Q. Is it fair to say you have been in Stanley Pharmacy over a  
3 hundred times?

4 A. Yes.

5 Q. Maybe even over 200 times?

6 A. Possibly.

7 Q. And you never spoke with the pharmacist that you said you  
8 once made eye contact with, right?

9 A. No, sir.

10 Q. Never said two words to her?

11 A. No, sir.

12 Q. She never said two words to you?

13 A. No.

14 Q. Every conversation that you ever had about controlled  
15 substances was with Ji and Ji alone, right?

16 A. Yes.

17 Q. Now when he would take you off to the side, did he take you  
18 to the place where we saw your brother speaking to him on the  
19 video?

20 A. Yes.

21 Q. That's same general area?

22 A. Yes.

23 Q. And if you remember from the video, I think your brother  
24 was pretty tall guy sort of leaning in, right?

25 A. Yes.

E9ATCHA5

Girdauskas - cross

1 Q. The conversations that you had with Ji in that same place  
2 that we saw on the video, that was a private conversation  
3 between you and Ji, right?

4 A. Yes.

5 Q. You weren't broadcasting, you weren't speaking loudly with  
6 Ji when you were discussing controlled substances, right?

7 A. No.

8 Q. And Ji wasn't speaking loudly with you?

9 A. No.

10 Q. He was having a private conversation with you and you were  
11 having a private conversation with him?

12 A. Yes.

13 Q. You didn't want anyone else to hear what you were saying,  
14 right?

15 A. Yeah.

16 Q. You were talking to Ji?

17 A. Yes.

18 Q. And he was talking to you?

19 A. Yes.

20 Q. How many times, if you had to estimate -- let me ask it  
21 this way, how many fraudulent prescriptions, stolen  
22 prescriptions, whatever you want to call it, would you say you  
23 got from Ji through the years?

24 A. Hundreds.

25 Q. And did you ever go in on weekends?

E9ATCHA5

Girdauskas - cross

1 A. Saturday.

2 Q. And how often would you go in after hours? Would it be  
3 once a week, twice a week, once a month, if you had to  
4 estimate?

5 A. A few times a week.

6 Q. A few times a week. And was it always your suggestion that  
7 you and Ji meet after hours?

8 A. No, it was just if we were running late, we knew he closed  
9 at six.

10 Q. So you would ask him to stay open a little later?

11 A. Yes.

12 Q. Now I think you said on direct examination, I might have  
13 said his name wrong, Joe Fasce?

14 A. Fasce.

15 Q. Joe Fasce is the one that told you about Ji, correct?

16 A. Yes.

17 Q. And what he told you is that Ji would essentially do  
18 anything, right?

19 A. Yes.

20 Q. And do you know -- actually withdrawn.

21 Did Fasce have to introduce you to Ji?

22 A. No.

23 Q. And so when you went in and spoke to Ji the first time, do  
24 you remember what you said to him?

25 A. First time I filled my prescription in my name.

E9ATCHA5

Girdauskas - cross

1 Q. When was the first time you and Ji had a conversation about  
2 illegal prescriptions?

3 A. Maybe a couple of times after that.

4 Q. And how did it come up? Did you bring it up, did he bring  
5 it up? Tell us how the first time it came up.

6 A. Just came up.

7 Q. Do you remember if you brought it up?

8 A. I didn't bring it up, no.

9 Q. Would you call him on the phone often, once a week or twice  
10 a week?

11 A. Couple of times a week.

12 Q. And if someone else at the pharmacy answered the phone,  
13 would you ask to speak to Ji?

14 A. Ji would answer the phone all the time.

15 Q. So you never called the pharmacy and someone else answered  
16 the phone?

17 A. No.

18 Q. You called the pharmacy and you spoke to Ji, correct?

19 A. Yes.

20 Q. And Ji from time to time would send prescriptions away,  
21 right, say that he didn't want it for whatever reason, right?

22 A. Yes.

23 Q. And you said that was mostly in the beginning, right?

24 A. Yes.

25 Q. And when he would say this to you, did he give a reason?

E9ATCHA5

Girdauskas - cross

1 Did you say what was wrong with the prescription?

2 A. He would say if the ink was running or something, too bad,  
3 he couldn't do it.

4 Q. When you and he had that conversation, was that sort of the  
5 conversation off to the side, the place on the side of the  
6 counter?

7 A. Yes.

8 Q. Now at one point you said in the beginning you would put  
9 the prescription in a basket, correct?

10 A. Yes.

11 Q. But then that changed, right?

12 A. Yes.

13 Q. How did it change exactly?

14 A. You had to put the money and the prescription in a bag,  
15 brown bag.

16 Q. And you said that the counter people would then give that  
17 to Ji, correct?

18 A. Yes.

19 Q. The counter people is not the pharmacist?

20 A. No.

21 Q. Bear with me one second?

22 A. No problem.

23 (Pause)

24 Q. I think you said at one point on direct testimony that you  
25 thought that the pharmacist's writing had smudged, correct?

E9ATCHA5

Girdauskas - cross

1 A. Yes.

2 Q. You don't know why that was, correct?

3 A. Written on a wet piece of prescription.

4 Q. Also could have been that her water bottle made  
5 condensation and the prescription was in with the condensation  
6 from the water bottle, right?

7 A. Could have been.

8 Q. You said you are looking at a maximum sentence of 110 years  
9 for all of your offenses, correct?

10 A. Yes.

11 Q. And you're looking at a maximum 20 years on the oxycodone  
12 conspiracy, right?

13 A. Yes.

14 Q. What are the other offenses?

15 A. Three other drug conspiracies and medical fraud.

16 Q. And it's within the realm of possibility that you get time  
17 served, correct?

18 A. Yes.

19 Q. And you're hoping, are you not, that by testifying at the  
20 trial here between this older gentleman and this woman you can  
21 be back on the street as soon as possible?

22 A. Yes.

23 MR. AGNIFILO: I have nothing else.

24 THE COURT: Mr. Riopelle.

25 MR. RIOPELLE: Yes, thank you, your Honor, I have some

E9ATCHA5

Girdauskas - cross

1 questions.

2 CROSS-EXAMINATION

3 BY MR. RIOPELLE:

4 Q. Good afternoon, Mr. Girdauskas.

5 A. Good afternoon.

6 Q. Did I pronounce that correctly?

7 A. Close enough.

8 Q. We never met before either, have we?

9 Mr. Girdauskas, do you recall that earlier today you  
10 testified under oath that you began filling the prescriptions  
11 you have described at the Stanley Pharmacy in 2009?

12 A. Yes, late 2009.

13 Q. And am I correct that before you signed your plea  
14 agreement, about which you just testified, you met with the  
15 government on several occasions?

16 A. Yes.

17 Q. And on those occasions you met with them and described your  
18 history in connection with the Stanley Pharmacy and other  
19 matters, correct?

20 A. Yes.

21 Q. And am I correct that at the outset of the first of those  
22 meetings, you signed another agreement which is called a  
23 proffer agreement?

24 A. Yes.

25 Q. And that's also sometimes calls a queen for a day

E9ATCHA5

Girdauskas - cross

1 agreement? Did you hear it referred to like that?

2 A. I never heard of that. I don't know what you're talking  
3 about.

4 Q. In any event, you signed this other agreement, and that  
5 agreement was explained to you, am I correct?

6 A. Yes.

7 Q. And it was explained to you by the assistant U.S. attorney  
8 who was asking you the questions in that meeting, correct?

9 A. Yes.

10 Q. And that assistant U.S. attorney explained to you, among  
11 other things, that the agreement would protect you for the  
12 statements that you make in the meeting, correct?

13 A. Yes.

14 Q. But it would not protect you for a false statement made in  
15 the meeting, would it?

16 A. No.

17 Q. In other words, if you were to make a false statement in  
18 that meeting, that could be a separate crime, correct?

19 A. Yes.

20 Q. And that was explained to you in that first meeting, am I  
21 right?

22 A. Yes.

23 Q. Now as you sat there in the meeting, you realized that it  
24 was important that you get the facts right when you explained  
25 them to the government, correct?

E9ATCHA5

Girdauskas - cross

1 A. Yes.

2 Q. Because you were hoping as a result of that meeting to get  
3 the cooperation agreement that you have now, right?

4 A. Yes.

5 Q. And you understood that if you were to lie in that meeting  
6 you might not get the cooperation agreement that you have now,  
7 correct?

8 A. Yes.

9 Q. And you understood that if you were to lie in that meeting  
10 that could indeed be a separate crime, a false statement to a  
11 federal officer, right?

12 A. Yes.

13 Q. Now in those meetings that you had before you got your  
14 cooperation agreement, am I correct that Agent Polimeno was in  
15 some of those meetings?

16 A. Yes.

17 Q. And you saw him taking notes, is that right?

18 A. Yes.

19 Q. And there were other agents present as well, correct?

20 A. Yes.

21 Q. And they took notes also, right?

22 A. I never noticed.

23 Q. You only noticed Agent Polimeno taking notes, right?

24 A. Yes.

25 Q. And do you recollect that in that important meeting where

E9ATCHA5

Girdauskas - cross

1 you met with the government prior to your cooperation  
2 agreement, do you remember that you told them that in fact you  
3 began to fill prescriptions at the Stanley Pharmacy in 2011?  
4 Do you remember telling them that?

5 A. No.

6 Q. Let me show you something, sir. I'm going to show you  
7 first what's been marked Government Exhibit 3501-6.

8 MR. RIOPELLE: Judge, may I approach the witness?

9 THE COURT: Yes, you may.

10 Q. Mr. Girdauskas, I'm going to ask you to take a moment or  
11 two to look at this document.

12 Does this appear to be notes of statements that you  
13 made in a proffer session with the government, that meeting  
14 that we discussed?

15 MR. TEHRANI: Objection.

16 THE COURT: Sustained. Ask him if it refreshes his  
17 recollection ask him a yes or no question.

18 Q. Sir, I direct your attention about a third of the way down  
19 page one. You're welcome to look at the entire document, but  
20 looking about a third of the way down that page, sir, does that  
21 refresh your recollection that when you met with the government  
22 you told them that you went to the Stanley Pharmacy in  
23 approximately 2011?

24 A. I don't even see it on here.

25 Q. Isn't it a fact, sir, that you told the government in your

E9ATCHA5

Girdauskas - cross

1 meeting with them that you began going to the Stanley Pharmacy  
2 in about 2011?

3 Isn't that a fact?

4 A. I don't see it on here.

5 Q. Let me show you another document.

6 MR. RIOPELLE: May I approach, your Honor?

7 THE COURT: Yes, you may.

8 Q. Let me show you this one. You can give me the handwritten  
9 one back. Thank you, sir.

10 I'm showing you now what's been marked Government  
11 Exhibit's 3501-11. You have never seen that document before,  
12 have you, sir?

13 A. No.

14 Q. Sir, you're welcome to look at the entire document, but I  
15 will direct your attention to the first sentence under the bold  
16 word "details."

17 Have you had a chance to read that?

18 A. Yep.

19 Q. Having read that sentence, sir, does it refresh your  
20 recollection when you met with the government you told them  
21 that you started going to the Stanley Pharmacy in approximately  
22 2011 because your previous pharmacy was out of stock of  
23 oxycodone?

24 A. I don't remember that. Possibly could have made a mistake.

25 Q. Sir, do you deny making that statement to the government?

E9ATCHA5

Girdauskas - cross

1 MR. TEHRANI: Objection, your Honor.

2 THE COURT: Sustained.

3 Q. Isn't it a fact you made that statement to the government?

4 THE COURT: Sustained.

5 MR. TEHRANI: Objection.

6 A. No.

7 THE COURT: Strike the answer. The objection is  
8 sustained.

9 THE WITNESS: Sorry about that.

10 Q. Sir, did I hear you correctly that among the prescriptions  
11 that you washed were prescriptions written to your children?

12 A. Yes, sir.

13 Q. What were those prescriptions originally written to your  
14 children for?

15 A. To visit other doctors.

16 Q. And you used those prescriptions, among others, to get  
17 oxycodone, is that right?

18 A. Yes, sir.

19 Q. Now if I understood you correctly, when you picked up  
20 prescriptions, you picked them up from Ji Lee, correct?

21 A. Yes.

22 Q. And when you called the pharmacy, you spoke only to Ji Lee,  
23 correct?

24 A. Yes.

25 Q. When you gave -- when you went to the pharmacy, you gave

E9ATCHA5

Girdauskas - cross

1 the prescriptions either to the women who were working at the  
2 cash register or directly to Mr. Ji Lee, correct?

3 A. Yes.

4 Q. And am I right that you would see Ji Lee enter information  
5 into the computer at the pharmacy?

6 A. Yes.

7 Q. Am I correct that you would see Ji Lee put labels on  
8 prescription bottles from time to time?

9 A. Yes.

10 Q. Am I correct that you would see Ji Lee make handwritten  
11 notes on the prescriptions from time to time?

12 A. Yes.

13 Q. And it was Ji Lee who you saw write H on the prescriptions  
14 from time to time, is that correct?

15 A. I never seen that.

16 Q. But you did see him making writings on the prescriptions?

17 A. Yes.

18 Q. Am I correct that you never dealt with my client, Hi Jong  
19 Lee?

20 A. No.

21 Q. In other words, that is correct?

22 A. That is correct.

23 THE COURT: No, he never dealt.

24 MR. RIOPELLE: Yes, I wanted to confirm that, Judge.

25 THE COURT: All right.

E9ATCHA5

Girdauskas - cross

1 Q. Now am I right that when you went to the pharmacy, you  
2 would try not to stay there too long at any given time,  
3 correct?

4 A. As long as it took to fill them.

5 Q. But you wanted to be in and out, right?

6 A. Basically, yeah.

7 Q. Although you were never in there longer than you needed to  
8 be, you did see that the pharmacy during business hours could  
9 be a busy place, correct?

10 A. Yes.

11 Q. And you saw in some of the videos there were many people  
12 coming in and out of the pharmacy in short periods of time,  
13 correct?

14 A. Yes.

15 MR. RIOPELLE: If I may have just a moment, your  
16 Honor.

17 (Pause)

18 MR. RIOPELLE: I have no further questions at this  
19 time.

20 THE COURT: Thank you.

21 Mr. Tehrani?

22 MR. TEHRANI: No further questions, your Honor.

23 THE COURT: Mr. Girdauskas, you're excused.

24 Government call its next witness.

25 MR. TEHRANI: The government calls Miriam Padilla.

E9ATCHA5

Padilla - direct

1 MIRIAM PADILLA,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TEHRANI:

6 Q. Ms. Padilla, where do you live?

7 A. In the Bronx.

8 Q. Where did you grow up?

9 A. In the Bronx.

10 Q. How far did you go in school?

11 A. Eleventh grade.

12 Q. Are you currently employed?

13 A. No.

14 Q. Were you recently employed?

15 A. Yes.

16 Q. Where did you work?

17 A. In the Bronx in a pharmacy called Well Care.

18 Q. And prior to that pharmacy, where did you work?

19 A. Stanley Pharmacy.

20 Q. Where is that?

21 A. In Yonkers.

22 Q. When did you work there?

23 A. October 2010 to January 2013.

24 Q. What was your job at Stanley Pharmacy?

25 A. I was a cashier clerk there.

E9ATCHA5

Padilla - direct

1 Q. And prior to working at Stanley Pharmacy, had you ever  
2 worked at a pharmacy before?

3 A. No.

4 Q. Did you receive any formal pharmacy education?

5 A. No.

6 Q. Any medical education?

7 A. No.

8 Q. What were your job responsibilities as a cashier at Stanley  
9 Pharmacy?

10 A. When the customer walked in they came in with a  
11 prescription, they would come to us, and we would take their  
12 prescription, ask for insurance, get information, date of  
13 birth, address, write all that information, put it in a little  
14 basket, pass it to the back, it would get filled, it would come  
15 out. When it was filled we would call the patient or customer  
16 and have them sign for their medications.

17 Q. Now how did you get your job at Stanley Pharmacy?

18 A. Through Craigslist.

19 Q. And what happened?

20 A. I saw the ad and I sent my résumé and they called me and  
21 told me to come in the next day.

22 Q. When you say they called you, who specifically called you?

23 A. Ji's wife.

24 Q. Who is Ji?

25 A. Ji was my boss there at Stanley.

E9ATCHA5

Padilla - direct

1 Q. Now other than that first conversation that you had with  
2 Ji's wife, did you ever see Ji's wife in the pharmacy again?

3 A. I saw her a few weeks after I was working there I met her  
4 in person.

5 Q. And then would you see her from time to time after that?

6 A. Maybe a once a month.

7 Q. What would she do?

8 A. She would come in, clean the back, she would take the over  
9 the counter products and get credit for the ones that were  
10 expired.

11 Q. When you first started working at Stanley Pharmacy, who  
12 else worked there?

13 A. It was me, it was Ixchel, Claudia, Oscar, Tina, and Ji.

14 Q. And could you describe what those individuals' roles were  
15 at the pharmacy?

16 A. Tina was the pharmacist, Oscar was the level guy, me,  
17 Ixchel and Claudia did the cashier clerk work.

18 Q. Do you see Tina in the courtroom today?

19 A. Yes.

20 Q. Could you please identify her by an article of clothing?

21 A. Black jacket or blouse.

22 MR. AGNIFILO: She seemed to be identifying the  
23 defendant.

24 THE COURT: The record will reflect Ms. Padilla  
25 identified Ms. Chai.

E9ATCHA5

Padilla - direct

1 Q. What was her role at the pharmacy?

2 A. She was the pharmacist there.

3 Q. How did you know that?

4 A. She wore the white lab coat and gave consultation to the  
5 customers that walked in with questions.

6 Q. Did she do anything else at the pharmacy?

7 A. She labeled bottles, she did counting of pills.

8 Q. Did anyone else at the pharmacy ever wear a white lab coat,  
9 as far as you know?

10 A. No.

11 Q. Now other than Ji and Oscar, were there any other males at  
12 the pharmacy?

13 A. Ji's father used to come in on Wednesdays. He used to do  
14 the payroll.

15 Q. And how did you refer to Ji's father?

16 A. As Mr. Lee.

17 Q. Do you see Mr. Lee in the courtroom here today?

18 MR. RIOPELLE: We'll stipulate she knows Mr. Lee, your  
19 Honor.

20 THE COURT: The record will reflect Ms. Padilla knows  
21 Mr. Lee.

22 Q. Could we put up Government Exhibit 311.

23 Who is that?

24 A. That's Ji.

25 Q. Ms. Padilla, are you testifying here today pursuant to any

E9ATCHA5

Padilla - direct

1 kind of agreement?

2 A. Yes.

3 Q. And the agreement that you have, is that with the  
4 government?

5 A. Yes.

6 Q. Is that referred to as a non-prosecution agreement?

7 A. Yes.

8 Q. And does the agreement that you have with the government  
9 contain all the terms and conditions of your agreement with the  
10 government?

11 A. Yes.

12 Q. And under the agreement, are you required to testify here  
13 today?

14 A. Yes.

15 Q. And then also under the agreement the government has  
16 provided for certain protections against prosecution against  
17 you, is that right?

18 A. Yes.

19 Q. And that includes protection for prosecution for your  
20 employment at Stanley Pharmacy?

21 A. Yes.

22 Q. Now Ms. Padilla, have you ever been arrested?

23 A. Yes.

24 THE WITNESS: Sorry.

25 THE COURT: Would you like some water?

E9ATCHA5

Padilla - direct

1                   THE WITNESS: Yes.

2                   THE COURT: Are you all right?

3                   THE WITNESS: Yes, thank you.

4                   THE COURT: Go ahead.

5                   A. Yes, I had been arrested once before, yes.

6                   Q. And when was that, approximately?

7                   A. 1992.

8                   Q. What were the circumstances of that?

9                   A. I was -- I had just had a baby and I went to go visit my  
10                   husband at work, and I took him some lunch. And then a few  
11                   minutes later a white van pulled up and some officers came out  
12                   and arrested me and my husband.

13                   Q. Were you charged with a crime?

14                   A. Yes.

15                   Q. What were you charged with?

16                   A. Selling of drugs.

17                   Q. Did you sell drugs?

18                   A. No, I did not.

19                   Q. But you pled guilty, is that right?

20                   A. Yes, I did.

21                   Q. Why did you do that?

22                   A. I was afraid my lawyer -- my lawyer told me if I went to  
23                   trial, I may not see my kids and go to prison. So he  
24                   recommended that I take the guilty plea and get five years  
25                   probation, and that's what I did.

E9ATCHA5

Padilla - direct

1 Q. Did you get five years probation?

2 A. Yes, I got five years, but I -- the judge closed it in  
3 1995.

4 Q. Now after your arrest, did you ever apply for any kind of  
5 public assistance?

6 A. I did.

7 Q. And were you entirely truthful in those applications?

8 A. I was not.

9 Q. How not?

10 A. On the part where they asked you have you ever been  
11 arrested or committed a crime, I lied, I said no, because I was  
12 afraid that if I said yes -- I was embarrassed to say yes, I  
13 was arrested, and I also thought that they would deny me if I  
14 said I was -- that I was arrested.

15 Q. And does your agreement with the government also protect  
16 you against prosecution for your statements in those  
17 applications?

18 A. Yes.

19 Q. Before you signed the agreement, did you meet with the  
20 government?

21 A. Yes, I did.

22 Q. Approximately how many times?

23 A. Four times.

24 Q. And that includes times after you signed the agreement?

25 A. Yes, yes.

E9ATCHA5

Padilla - direct

1 Q. And what happened in those meetings?

2 A. They prepared me for the trial, and I was -- I had to be  
3 honest and truthful.

4 Q. So generally speaking, you were asked questions and you  
5 answered those questions?

6 A. Yes.

7 Q. Now getting back to your job at Stanley Pharmacy, what  
8 hours did you work there?

9 A. I worked from nine to six.

10 Q. What days?

11 A. Monday through Friday.

12 Q. And was Ji at the pharmacy whenever you were there?

13 A. Yes.

14 Q. What about Tina?

15 A. Yes.

16 Q. So at least as far as you know, Tina worked Monday through  
17 Friday, nine to six?

18 A. Correct.

19 Q. Focusing on the time period when you first started working  
20 at Stanley Pharmacy, could you explain the process for filling  
21 a prescription there?

22 A. The patient or customer would come in with the  
23 prescription, their insurance, if they had insurance, we would  
24 ask for their information, date of birth, address, we would put  
25 it in the basket, put it in the little window behind us, it

E9ATCHA5

Padilla - direct

1 would get filled. If they didn't wait, we would leave it in  
2 the front; if they were there, we would call them and have them  
3 sign for it.

4 Q. Where would they sign for it?

5 A. We had a book where they would sign for it.

6 Q. And what information was provided with the filled  
7 prescription with the customer?

8 A. Sorry, can you say that again?

9 Q. You may have said it. Was there a receipt provided to the  
10 customer?

11 A. Yes, there was a receipt when they received the medication,  
12 and on the receipt it stated name and address, phone number of  
13 the pharmacy, the doctor's name, the patient's name, if it was  
14 cash, the amount, if it was insurance, it would say which  
15 insurance, and some other numbers, the address and some RX  
16 numbers at the bottom.

17 MR. TEHRANI: Your Honor, may I approach?

18 THE COURT: Yes, you may.

19 Q. Showing you what has been marked as Government Exhibit 12,  
20 do you recognize that?

21 A. Yes.

22 Q. What is it?

23 A. It's a receipt we give to the customers when we get their  
24 medications.

25 Q. And that's the orange receipt that you have just been

E9ATCHA5

Padilla - direct

1 describing?

2 A. Yes.

3 MR. TEHRANI: Your Honor, the government offers  
4 Government Exhibit 12.

5 MR. AGNIFILO: No objection.

6 MR. RIOPELLE: No objection, your Honor.

7 THE COURT: 12 is received in evidence.

8 (Government's Exhibit 12 received in evidence)

9 MR. TEHRANI: May I publish to the jury?

10 THE COURT: Yes, you may.

11 BY MR. TEHRANI:

12 Q. So looking at the receipt, do you know what the form of  
13 payment is?

14 A. Where it says CA, that means cash, then right underneath  
15 it, it says the amount.

16 Q. So how much was paid for this prescription?

17 A. \$1,074.20.

18 Q. And what is this a prescription for?

19 A. Oxycodone, 30 milligrams.

20 Q. Where does it say that?

21 A. Right under the person's name on the left side of the  
22 receipt.

23 Q. And what is the person's name?

24 A. Lori Mello.

25 Q. And underneath the person's name is what information?

E9ATCHA5

Padilla - direct

1 A. The address.

2 Q. And what's the doctor?

3 A. The doctor is Dr. Greenidge.

4 Q. That's written where?

5 A. On top of the customer's name.

6 Q. When was this prescription filled?

7 A. September 21, 2012.

8 Q. Where is that written?

9 A. That's on the other side of where the doctor's name is.

10 Q. Now when you were working at Stanley Pharmacy, again the  
11 beginning of when you started working there, did you do  
12 anything to verify the identity of the customers?

13 A. We asked for ID.

14 Q. For every prescription or just certain types of  
15 prescriptions?

16 A. No, if it was a controlled substance we would ask for ID.

17 Q. Then if the payment was insurance, would you also get an  
18 insurance card?

19 A. Yes.

20 Q. How did you know to ask for ID for controlled substances?

21 A. When I first started working there, one of the girls showed  
22 me which ones are controlled substance, and she told me you  
23 always have to ask for ID. There was also some over-the-  
24 counter medications that required ID, so she showed me which  
25 ones I had to ask ID for.

E9ATCHA5

Padilla - direct

1 Q. And what would happen if a customer brought in a  
2 prescription for a controlled substance and you didn't ask for  
3 an ID?

4 A. They wouldn't receive the prescription.

5 Q. Were you told by anyone at the pharmacy on those particular  
6 occasions that you needed to ask for an ID?

7 A. No.

8 Q. So there were never circumstances where you didn't ask for  
9 an ID and someone who worked at the pharmacy asked you to ask  
10 the customer for ID?

11 A. Yes.

12 Q. Who was that?

13 A. Ji.

14 Q. Again, when you first started working at the pharmacy, were  
15 most of the prescriptions paid for by insurance, by cash, by  
16 some other way?

17 A. By insurance.

18 Q. Now where did you work at the pharmacy?

19 A. I worked in the second register, which was towards the  
20 left-hand side when you are coming in the pharmacy in the  
21 front.

22 Q. Well, if you're facing towards the customers, are you on  
23 the left-hand side or the right-hand side?

24 A. I am on the left-hand side.

25 Q. So the right side of a customer facing you?

E9ATCHA5

Padilla - direct

1 A. Yes.

2 Q. And where did Ji work?

3 A. I worked -- where did I work?

4 Q. Where did Ji work?

5 A. Ji worked behind me.

6 Q. And where did Tina work?

7 A. Tina worked behind me as well, on his right-hand side.

8 Q. Now was there anything separating where you worked from  
9 where Ji and Tina worked?

10 A. Yes, there was like a semi wall from the waist down. It  
11 was shelves, and there was some bins behind us where we kept  
12 patients' medication. If they didn't come pick it up, it would  
13 be in the back in the bins. And then on the right-hand side  
14 there was like a kind of like a peg wall and there was some  
15 stuff that we sold, razors, headphones, and the shelves had  
16 medications, pregnancy tests.

17 Q. Now was it possible to see from the front area of the  
18 pharmacy into the back area of the pharmacy?

19 A. Yes.

20 Q. How?

21 A. It wasn't closed off, so if you were walking in the  
22 pharmacy from the front you could see in the back.

23 Q. Do you know whether anyone at the pharmacy verified  
24 prescriptions at the doctor's offices before the prescription  
25 was filled when you first started working at the Stanley

E9ATCHA5

Padilla - direct

1 Pharmacy?

2 A. Yes, if customers came in and they said the doctor had  
3 faxed it, if he didn't get a fax, he would call, verify, then  
4 they would wait for their medications.

5 Q. Who would call?

6 A. Ji.

7 Q. How do you know?

8 A. You could hear him on the phone to doctors.

9 Q. So sitting where -- working where you were, you could hear  
10 someone on the phone in an area behind you?

11 A. Yes.

12 Q. Now as far as filling prescriptions, what roles did Ji and  
13 Tina play?

14 A. When we handed the prescription to Ji, you could hear him  
15 typing on the computer information, and they would fill it back  
16 there, count pills, labeling the bottles.

17 Q. Were there times you turned around and could see who was  
18 doing what?

19 A. Yes, sometimes, yes.

20 Q. What would you see?

21 A. Tina would be labeling bottles, sometimes she would count  
22 pills.

23 Q. Would you ever see Tina count pills?

24 A. Sometimes.

25 Q. Did you ever see anyone else put labels on bottles?

E9ATCHA5

Padilla - direct

1 A. No.

2 Q. Other than Tina?

3 A. No.

4 Q. Approximately how far apart did Ji and Tina work?

5 A. About arm's length.

6 Q. Now if a customer had a question about medication, who  
7 would speak to the customer?

8 A. Tina would.

9 Q. How often would that happen?

10 A. Maybe once a week. If somebody just happened to come in  
11 the pharmacy and say they just got a cut, what can they get, or  
12 they had something that they wanted to know if they could use  
13 something but they think this medication or something, then we  
14 would tell them to wait a few minutes or send them to Tina and  
15 she would consult them on the side.

16 MR. TEHRANI: Your Honor, may I approach?

17 THE COURT: Yes, you may.

18 Q. I'm showing you what is in evidence as Government  
19 Exhibit 1006.

20 MR. TEHRANI: May I publish it to the jury?

21 THE COURT: Yes, you may.

22 Q. Do you recognize that?

23 A. Yes, this is what the pharmacy looked like.

24 Q. And could you indicate where in the pharmacy you worked?

25 A. On my left-hand side where it says OTC counter, I worked on

E9ATCHA5

Padilla - direct

1 the second register there.

2 Q. So you worked behind the area labeled OTC counter?

3 A. Yes.

4 Q. And with the diagram oriented the way it is, if you were  
5 facing the customer area, you worked to the left?

6 A. Yes.

7 Q. Closest to the wall there?

8 A. Yes.

9 Q. And using the letters OTC, what does that stand for?

10 A. It means over the counter.

11 Q. And using the letters OTC, approximately where were you?

12 A. Right behind towards the left of the letters OTC, I was  
13 more closer to the wall.

14 Q. And there was another register at that same counter?

15 A. Yes.

16 Q. And approximately, again, using the letters OTC counter,  
17 where was that on the register?

18 A. A little bit further from on the right-hand side from the  
19 word "counter."

20 Q. Sort of directly in front of the door?

21 A. Yes.

22 Q. And who typically worked there?

23 A. Ixchel. I don't know how to spell her name.

24 Q. You also mentioned there was a Claudia that worked at the  
25 pharmacy?

E9ATCHA5

Padilla - direct

1 A. Yes.

2 Q. And were Claudia and Ixchel related in some way?

3 A. Yes, they were sisters.

4 Q. Now where did Claudia work?

5 A. Claudia worked towards where the OTC counter is but where  
6 the side entrance is. There was a counter there, it was  
7 another counter there, she worked there. She did paperwork  
8 with the prescriptions.

9 Q. Would that be behind the RX counter all the way to the  
10 right?

11 A. Yes.

12 Q. Now behind where you are working on this diagram -- or you  
13 have a register sort of to the left of where it says OTC  
14 counter, what's directly behind you?

15 A. Behind me was some bins and some shelving with birth  
16 control, baby -- little teething drops, we had Tylenol, Motrin,  
17 headache pills and stuff on the shelves beneath.

18 Q. That's the shelves you were describing before?

19 A. Yes.

20 Q. Where did Ji work?

21 A. Ji worked behind the RX counter in between where it says  
22 "RX" and "counter," in between those two words.

23 Q. Now you testified earlier that part of the process for  
24 filling prescriptions was getting information from customers  
25 and then passing it back to behind the RX counter. Where did

E9ATCHA5

Padilla - direct

1 that happen? Where did that pass through happen?

2 A. Well, we would take it right there on the counter where we  
3 worked, then we would pass it through a little window right  
4 there between the "RX" and the "counter" words there was a  
5 little open window there, kind of, and we would put the stuff  
6 in the blue bin and then put it on the little shelf and they  
7 would grab it from there.

8 Q. Where did Tina work?

9 A. Tina worked on the right-hand side of Ji, closer to where  
10 the word "counter" is but where it says "RX," around there.

11 Q. And if you were to turn around from where you were  
12 working, could you see what Ji and Tina were doing?

13 A. No, I would have to be closer to the window to be able to  
14 see.

15 Q. Now there are two entrances to the pharmacy?

16 A. Yes.

17 Q. And there's an entrance on Palisade Avenue?

18 A. Yes.

19 Q. That's the main entrance?

20 A. That's correct.

21 Q. And then there's also an entrance on Main Street?

22 A. Yes.

23 Q. And was that referred to as a side entrance?

24 A. Yeah, the side entrance. We used to come in through there  
25 in the morning and clock in through that entrance.

E9ATCHA5

Padilla - direct

1 Q. So if you came in through either of those entrances, how  
2 would you get from the front area of the pharmacy to the back  
3 area of the pharmacy?

4 A. There was two little like -- on my side of where I worked,  
5 there was like a little entrance, like a little step coming up,  
6 but you could come down and exit through my side out to the  
7 front. Or where Ji worked on the other side, he could go  
8 straight and pass Tina, and at the end of that other counter he  
9 could exit through that as well.

10 Q. And can you explain that a little bit, so part of the RX  
11 counter to the side entrance?

12 A. There was a counter there and kind of like a swing door or  
13 something, and you could just open it and exit through there.

14 Q. And what was behind the RX counter, again also towards the  
15 side entrance?

16 A. There was like baby Tylenol, children's Tylenol, like it  
17 was being filled generic, it was on that side, and also a copy  
18 machine back there, there was some stool softeners.

19 Q. When you first started working at Stanley Pharmacy, did  
20 anyone receive their medication at that side area?

21 A. No.

22 Q. Did anyone pay for medication at that side area?

23 A. No.

24 Q. Could you see into the back area of the pharmacy from that  
25 side area?

E9ATCHA5

Padilla - direct

1 A. Yes.

2 Q. And that back area is where Tina worked?

3 A. Yes.

4 Q. Ms. Padilla, did there come a time that things began to  
5 change at Stanley Pharmacy?

6 A. Yes, we started getting customers started coming in and  
7 they were paying a certain amount of money for controlled  
8 substance.

9 Q. And approximately when was that?

10 A. It had to be like a little over a year that I was there.

11 Q. And you started when, again?

12 A. In October.

13 Q. Of what year?

14 A. Of 2010.

15 Q. So you noticed things changing in late 2011?

16 A. Yes.

17 Q. And specifically what did you observe?

18 A. The guys that were coming in were paying cash and they had  
19 these prescriptions and they would pay -- it started out like  
20 with 700 something dollars for 30 milligrams of oxycodone.

21 Q. And when you say "these guys," how many guys did you  
22 notice?

23 A. They had to be about six.

24 Q. And did they come into the pharmacy on a regular basis?

25 A. Yes.

E9ATCHA5

Padilla - direct

1 Q. How often?

2 A. Maybe two or three times a day, two or three times a week.

3 Q. And prior to this group of -- sorry, what was the number  
4 again that was in this group?

5 A. About six or seven.

6 Q. So trying to -- this group of six customers who are in  
7 every day multiple times per day, did you see any other  
8 customers in the pharmacy with any kind of regularity?

9 A. No.

10 Q. Did you ever see customers that came in on a monthly basis?

11 A. Yes.

12 Q. What was that for?

13 A. Like refills, or if they had to get a prescription for  
14 their medication, they would come in monthly.

15 Q. Would you typically see customers in the pharmacy more  
16 frequently than that?

17 A. Regular customers?

18 Q. Not part of this group of six that were just --

19 A. No, like once a month.

20 Q. Now this group of six customers that you saw in the  
21 pharmacy multiple times per day, were they buying anything in  
22 particular?

23 A. Just the oxycodone.

24 Q. How do you know they were buying oxycodone?

25 A. They would come in with the prescriptions and they would

E9ATCHA5

Padilla - direct

1 pay cash for it.

2 Q. And was there anything written on the receipts that were  
3 handed back that indicated it was oxycodone?

4 A. Yeah, on the prescription it would say oxycodone, it would  
5 have doctor's name, address.

6 Q. Did this group of six people use the same names every  
7 single time they were in pharmacy?

8 A. No.

9 Q. Was that suspicious to you?

10 A. Yes.

11 Q. Why?

12 A. Because after a while you have seen them there two or three  
13 times a day and you know them as one name and they have  
14 different names on the prescription, it didn't -- it seemed  
15 weird.

16 Q. And did you refer to this group by any particular name?

17 A. Yeah, we called them the Italians.

18 Q. Why?

19 A. They had an accent, they had a way about them, and --

20 Q. Did you think they were Italians?

21 A. We thought they were Italians, yes.

22 MR. TEHRANI: Your Honor, may I approach?

23 THE COURT: Yes, you may.

24 Q. Looking at what has been admitted into evidence as  
25 Government Exhibit 308, do you recognize that person?

E9ATCHA5

Padilla - direct

1 A. Yes.

2 Q. Who is it?

3 A. He went by the name Mike.

4 MR. TEHRANI: Could we publish it to the jury?

5 THE COURT: Yes.

6 Q. And what do you know about him?

7 A. He used to come in and he used to come in two or three time  
8 as a day, two or three times a week, sometimes he looked like  
9 he was out of it, sometimes he looked normal.

10 Q. He was one of this group of six people?

11 A. Yes.

12 Q. Taking a look at Government Exhibit 306, who is that?

13 A. He also went by the name Mike.

14 Q. And was he part of this group?

15 A. Yes.

16 Q. Take a look at Government Exhibit 305, who is that?

17 A. He went by the name Joe.

18 Q. Was he also part of this group of oxycodone customers?

19 A. Yes.

20 Q. And take a look at Government Exhibit 316, do you recognize  
21 that person?

22 A. Yes.

23 Q. Was he part of the regular group?

24 A. Yes.

25 Q. How do you refer to him?

E9ATCHA5

Padilla - direct

1 A. We called him M and M.

2 Q. Why?

3 A. Because he look like the rapper M and M.

4 Q. When this group of guys was filling oxycodone  
5 prescriptions, how did they pay?

6 A. They paid cash.

7 Q. And you mentioned this initially, but -- you mentioned this  
8 earlier, but initially how much did you observe that they were  
9 paying in cash?

10 A. At first they started paying like 700 something dollars.

11 Q. That was for one bottle of oxycodone?

12 A. One bottle?

13 Q. And what was your reaction to being given approximately  
14 \$700 in cash?

15 A. I just -- I thought wow, I mean \$750 or 700 something  
16 dollars for a bottle of pills, I just thought it was like a lot  
17 of money for pills.

18 Q. And how did you feel about handling that money?

19 A. I was nervous. I was afraid. I was scared. It was a lot  
20 of money to count before we put it in the register, and there  
21 was customers in the pharmacy.

22 Q. Now in the beginning when this crew the first started  
23 coming in, what was the process for them to get their  
24 prescriptions filled?

25 A. They would come in with the prescription, give it us, we

E9ATCHA5

Padilla - direct

1 would ask for date of birth, if the name wasn't clear or the  
2 address, we would write it down on the piece of paper, put it  
3 in a basket and pass it back.

4 Q. Then what would happen?

5 A. It would get filled and we would bring it out, call the  
6 name, and then they would sign for it and pay the cash.

7 Q. And where would the cash go?

8 A. In the register.

9 Q. Did you ask any of these oxycodone regulars for any kind of  
10 identification?

11 A. No.

12 Q. Why not?

13 A. We just didn't.

14 Q. Did you ever ask?

15 A. No.

16 Q. But you mentioned you asked them for date of birth?

17 A. Yes.

18 Q. Did you verify that information?

19 A. No.

20 Q. Did you notice whether the same person used the same date  
21 of birth every time?

22 A. No, it was always a different date of birth because we  
23 always asked for a date of birth.

24 Q. And I think that you testified earlier that the price of  
25 the prescriptions for this crew changed over time.

E9ATCHA5

Padilla - direct

1 A. Yes.

2 Q. What happened?

3 A. It increased to 800 something dollars.

4 Q. Did you say 800?

5 A. 800 or 8 something, I don't recall how much exactly.

6 Q. Did it increase further from there?

7 A. Yes.

8 Q. To what?

9 A. Then it increased to a thousand, I think it was 1,074.

10 Q. That was for one bottle of oxycodone?

11 A. Yes.

12 (Continued on next page)

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E9AZCHA6

Padilla - direct

1 BY MR. TEHRANI:

2 Q. Did it increase further from a thousand?

3 A. That's the last I remember it.

4 Q. Why don't you know whether it increased further from there?

5 A. After awhile it was a thousand and 74, we were, we were  
6 asked not to put the money in the register any more.

7 Q. Where would the money go?

8 A. The money would go in a bag, a paper bag.

9 Q. Where would the paper bags come from?

10 A. From us, the cashier clerks.

11 Q. Did any people bring in bags with them?

12 A. One person did. Joe would come in with the money already  
13 wrapped in a bag and he would just say, give this to Ji. And  
14 then I would pass it to the back to him.

15 Q. Now, did you notice whether the prices of other medications  
16 went up that much during the same time period?

17 A. No.

18 Q. So you did not observe any other similar increases?

19 A. I'm sorry?

20 Q. You did not observe any other increases like that?

21 A. No.

22 Q. So during this period of time, when the money was placed in  
23 the paper bag, did it go in the register?

24 A. No, it did not.

25 Q. Where did it go?

E9AZCHA6

Padilla - direct

1 A. We put it in a basket, and we would pass the basket to the  
2 back and they would take it from there.

3 Q. So the money in the bag went into the basket?

4 A. Yes.

5 Q. And before the system changed, when the cash was going into  
6 the register, did you make any observations about the quantity  
7 of cash that was in the register?

8 A. Yeah. There was a lot of cash in the register by the end  
9 of the day.

10 Q. And were there any difficulties with the operation of the  
11 register?

12 A. Yeah. Sometimes the little handle that clamps down on the  
13 money was a little, you know, kind of loose. It was, it was  
14 plastic. So we had to like either press it down and then try  
15 to close the register.

16 Q. Were it part of your responsibility to count the money in  
17 the register?

18 A. Yes.

19 Q. And when you first started working at Stanley Pharmacy, on  
20 an average day how much money would there be in the register at  
21 the end of the day?

22 A. Maybe between 100, 200. Depended on the day of the week.

23 Q. And did that increase.

24 A. Yes.

25 Q. And when this oxycodone crew first started or started

E9AZCHA6

Padilla - direct

1 coming, how much money was in the register at the end of the  
2 day?

3 A. Over a thousand, maybe over 1,500.

4 Q. And did it go back down?

5 A. No.

6 THE COURT: Mr. Tehrani, would this be a convenient  
7 place to take our recess?

8 MR. TEHRANI: Certainly, your Honor.

9 THE COURT: Ladies and gentlemen, we're going to  
10 recess now. We'll resume tomorrow morning at 9:30.

11 Remember my instruction, don't discuss the case, don't  
12 do any independent research. Keep open minds.

13 The jury room will be open at 9:00 o'clock, and we'll  
14 resume trial at 9:30 tomorrow morning. Thank you very much.

15 THE DEPUTY CLERK: All rise.

16 (Continued on next page)

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E9AZCHA6

Padilla - direct

1 (In open court, jury not present)

2 THE COURT: Ms. Padilla, you can step down. We'll see  
3 you tomorrow morning.

4 Okay, Mr. Riopelle.

5 MR. RIOPELLE: Judge, I just received an e-mail  
6 notifying me that Judge Koeltl has put on an arraignment in a  
7 case of mine tomorrow at 4:30. If you could please just ask  
8 Mr. Ovalles to call Judge Koeltl's Deputy and tell him I'll be  
9 ten minutes late? Because I don't want to shorten the trial  
10 day here.

11 THE COURT: I'm glad you don't.

12 MR. RIOPELLE: Yeah, I know better than to say that  
13 it's going --

14 THE COURT: All right. We'll be in touch with Judge  
15 Koeltl's.

16 MR. RIOPELLE: I'll run down there as fast as I can  
17 after the day.

18 THE COURT: Anything else?

19 MR. RIOPELLE: No, sir.

20 (Adjourned to September 11, 2014 at 9:30 a.m.)

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